

Exhibit L

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION</p> <p>2</p> <p>3</p> <p>4 SHONDEL CHURCH, et al.,)) 5 Plaintiffs,)) 6 vs.) Case No.) 17-04057-CV-C-NKL 7 STATE OF MISSOURI, et al.,)) 8 Defendants.)</p> <p>9</p> <p>10</p> <p>11 VIDEO-RECORDED DEPOSITION OF MARY FOX 12 TAKEN ON BEHALF OF THE PLAINTIFFS 13 DECEMBER 19, 2017</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 (Starting time of the deposition: 8:57 a.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION</p> <p>2</p> <p>3</p> <p>4 SHONDEL CHURCH, et al.,)) 5 Plaintiffs,)) 6 vs.) Case No.) 17-04057-CV-C-NKL 7 STATE OF MISSOURI, et al.,)) 8 Defendants.)</p> <p>9</p> <p>10 VIDEO-RECORDED DEPOSITION OF MARY FOX, 11 produced, sworn and examined on December 19, 2017, 12 between the hours of eight o'clock in the forenoon 13 and two o'clock in the afternoon of that day, at the 14 ACLU of Missouri Foundation, Suite 1130, 906 Olive 15 Street, St. Louis, Missouri 63101, before William L. 16 DeVries, a Certified Court Reporter (MO), Registered 17 Diplomate Reporter, and Certified Realtime Reporter, 18 in a certain cause now pending in the United States 19 District Court, Western District of Missouri, 20 Central Division, between SHONDEL CHURCH, et al., 21 Plaintiffs, vs. STATE OF MISSOURI, et al., 22 Defendants; on behalf of the Plaintiffs.</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX</p> <p>2 QUESTIONS BY: PAGE</p> <p>3 MR. MAUNE 7</p> <p>4 MR. MOORE 103</p> <p>5 MS. SHIPMA 187</p> <p>6 MR. MOORE 193</p> <p>7 MS. SHIPMA 194</p> <p>8 MR. MOORE 195</p> <p>9 EXHIBITS</p> <p>10 EXHIBIT PAGE</p> <p>11 Exhibit 11 Previously marked exhibit 25</p> <p>12 Exhibit 12 Previously marked exhibit 25</p> <p>13 Exhibit 28 Previously marked exhibit 29</p> <p>14 Exhibit 21 Previously marked exhibit 32</p> <p>15 Exhibit 32 Order Concerning Probation 35</p> <p>16 Revocation Hearing</p> <p>17 Exhibit 1 Previously marked exhibit 42</p> <p>18 Exhibit 6 Previously marked exhibit 77</p> <p>19 Exhibit 5 Previously marked exhibit 89</p> <p>20 Exhibit 33 State of Missouri Public 100</p> <p>21 Defender Commission Fiscal Year</p> <p>22 2017 Annual Report</p> <p>23 Exhibit 34 St. Louis Post-Dispatch article 102</p> <p>24 (The original exhibits were retained by the court</p> <p>25 reporter to be attached to the original and copies</p> <p>of the transcript.)</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES</p> <p>2 For the Plaintiffs:</p> <p>3 Mr. James J. Maune Orrick, Herrington & Sutcliffe LLP 2050 Main Street, Suite 1100 Irvine, California 92614 (949) 491-5616 jmaune@orrick.com</p> <p>6 Ms. Camille Joanne Rosca Orrick, Herrington & Sutcliffe LLP 51 West 52nd Street New York, New York 10019 (212) 506-3750 croscas@orrick.com</p> <p>10</p> <p>11</p> <p>12 For the Public Defender Defendants:</p> <p>13 Ms. Jacqueline Shipma Missouri State Public Defender Woodrill Center 1000 West Nifong Building 7, Suite 100 Columbia, Missouri 65203 (573) 525-5212 jacqueline.shipma@mspd.mo.gov</p> <p>16</p> <p>17</p> <p>18 For the State of Missouri and Governor Greitens:</p> <p>19 Mr. Justin C. Moore State of Missouri Attorney General's Office 815 Olive Street, Suite 200 St. Louis, Missouri 63101 (314) 340-3447 justin.moore@ago.mo.gov</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 Also present: 2 Mr. David Doell, Videographer 3 Alaris Litigation Services 4 711 North Eleventh Street 5 St. Louis, Missouri 63101 6 (314) 644-2191 7 1-800-280-3376 8 9 10 11 12 Court Reporter: 13 William L. DeVries, RDR/CRR 14 Missouri CCR #566 15 Alaris Litigation Services 16 711 North Eleventh Street 17 St. Louis, Missouri 63101 18 (314) 644-2191 19 1-800-280-3376 20 21 22 23 24 25</p>	<p>1 Services. 2 Would the attorneys present please 3 introduce yourselves? 4 MR. MAUNE: James Maune for plaintiffs. 5 MS. ROSCA: Camille Rosca for 6 plaintiffs. 7 MR. MOORE: Justin Moore for the 8 Attorney General's Office. 9 MS. SHIPMA: Jacqueline Shipma for the 10 MSPD defendants. 11 VIDEOGRAPHER: The court reporter 12 please swear in the witness and we may proceed. 13 COURT REPORTER: Do you swear or affirm 14 that the testimony you are about to give in this 15 proceeding will be the truth, the whole truth, and 16 nothing but the truth? 17 THE WITNESS: I do. 18 EXAMINATION 19 QUESTIONS BY MR. MAUNE: 20 Q. Morning, Ms. Fox. 21 A. Good morning. 22 Q. Have you had your deposition taken 23 before? 24 A. I have. 25 Q. I'll just cover a few basic ground</p>
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<p>1 IT IS HEREBY STIPULATED AND AGREED by 2 and between counsel for the Plaintiffs and counsel 3 for the Defendants that this deposition may be taken 4 in shorthand by William L. DeVries, RDR/CRR, a 5 Certified Court Reporter and Certified Shorthand 6 Reporter, and afterwards transcribed into 7 typewriting; and the signature of the witness is 8 expressly reserved. 9 * * * * * 10 MARY FOX, 11 of lawful age, produced, sworn and examined on 12 behalf of the Plaintiffs, deposes and says: 13 (Starting time of the deposition: 8:57 a.m.) 14 VIDEOGRAPHER: We are now on the 15 record. Today's date is December the 19th, 2017. 16 The time is approximately 8:57 a.m. This is the 17 video-recorded deposition of Mary Fox in the matter 18 of Church, et al., versus the State of Missouri, 19 et al., case number 17-04057-CV-C-NKL, in the United 20 States District Court for the Western District of 21 Missouri. 22 This deposition is being held at the 23 St. Louis ACLU. The reporter's name is Bill 24 DeVries. My name is David Doell, and I'm the legal 25 videographer. We are here with Alaris Litigation</p>	<p>1 rules. If you could please answer your questions 2 with a verbal response, not with hand gestures or 3 head shakes. 4 A. Okay. 5 Q. We'll try and avoid talking over each 6 other. I'll try -- and if you let me try and 7 complete the question before answering, even if you 8 can anticipate the answer, and I'll try not to talk 9 over you by asking another question. Does that 10 sound reasonable? 11 A. That sounds reasonable. 12 Q. If you don't understand one of my 13 questions, please let me know and I'll rephrase or 14 be more specific as necessary, and if -- we'll 15 frequently take breaks during this as we need to, 16 and if you could please answer any pending questions 17 prior to the break. 18 A. All right. 19 Q. All sound agreeable? 20 A. Yes. 21 Q. All right. How did you prepare for 22 this deposition today? 23 A. I met with Ms. Shipma yesterday. 24 Q. And who else was present? 25 A. No one.</p>

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<p style="text-align: right;">Page 9</p> <p>1 Q. How long did you meet for? 2 A. Maybe an hour. 3 Q. Did you review any documents in 4 preparation for this deposition? 5 A. Not while she was present, but I did 6 look at the case management database. 7 Q. Okay. Did you bring any of those 8 documents with you today? 9 A. I did not. 10 Q. Did any of those documents refresh your 11 recollection in preparation for offering testimony 12 here today? 13 A. I don't -- I already knew the facts 14 that were in them. I was just looking at the actual 15 numbers. 16 Q. Besides your counsel, did you speak 17 with anyone else to prepare to testify here today? 18 A. No. 19 Q. And can you please state your position? 20 A. I'm the district defender for the 21 St. Louis City trial office of the Missouri State 22 Public Defender System. 23 Q. And how long have you held that 24 position? 25 A. Ten years.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. And prior to 1994 did you have any 2 other legal jobs? 3 A. Yes. From nineteen eighty -- 1981 4 until 1987 I was a assistant public defender 5 initially in the Clayton office and then in 1986 I 6 transferred to the St. Louis City trial office. And 7 prior to that I was an associate at a small civil 8 firm named Kanefield, K-A-N-E-F-I-E-L-D, and Mohme, 9 M-O-H-M-E. 10 Q. Okay. So you said from -- you 11 testified that 1981 to 1987 you were an assistant 12 public defender in the Clayton office. Did you have 13 any legal jobs prior to 1981? 14 A. Yes. At Kanefield & Mohme. 15 Q. Okay. Kanefield & Mohme. And when did 16 you start at Kanefield Mohme? 17 A. Right after I was sworn in. So 18 October 1980. 19 Q. Okay. Great. 20 A. But I was in the Clayton office and the 21 St. Louis City office. From '86 to '87 it was the 22 St. Louis City office. 23 Q. And when you were at Kanefield & Mohme 24 did you handle criminal defense? 25 A. No, I did not.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. And what was your position prior to 2 that? 3 A. Prior to that I was in private practice 4 doing contract work for the St. Louis city juvenile 5 court representing parents who were facing the loss 6 of their children in care and protection cases. And 7 in addition doing some other legal work, mainly 8 around juvenile court. 9 Q. And how long were you in private 10 practice for? 11 A. So in that position I was there from 12 2000 until 2007. 13 Q. And what was your employment prior to 14 the year 2000? 15 A. So from 1994 until 2006 I was the 16 traffic commissioner for the 21st Judicial Circuit. 17 That was a part-time job. So part of the time that 18 was all that I was doing and another part of the 19 time I was also handling the contract work. 20 And then prior to that -- or during 21 that same time I should say I was also serving as a 22 hearing officer for the St. Louis Metropolitan 23 Police Department internal affairs division hearing 24 disciplinary cases for the Board of Police 25 Commissioners.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. What type of practice did you maintain? 2 A. It was civil. 3 Q. Civil. 4 A. Small civil actions generally. 5 Q. Which counties are included in your 6 district? That would be area 22, correct? 7 A. So the district covers the City of 8 St. Louis. 9 Q. Okay. 10 A. Prior to July of 2017 we also handled 11 conflict cases from the surrounding jurisdictions. 12 And we still have many of those conflict cases 13 pending. 14 Q. And so after July 2017 any new conflict 15 cases are no longer handled by public defenders in 16 the St. Louis City office; is that correct? 17 A. Unless the new conflict case is for a 18 client that we currently represent in one of those 19 conflict counties, then we get the new case also. 20 Q. We'll talk about conflicts more later 21 on. How is -- how is your office organized? How 22 many -- we'll start off with how many district 23 public defenders do you have in your office, 24 attorneys? 25 A. So there are 30 attorneys in the</p>

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<p style="text-align: right;">Page 13</p> <p>1 office.</p> <p>2 Q. Okay. And do you organize by case team</p> <p>3 or do you have an assistant and -- and how -- are</p> <p>4 those attorneys broken up into different teams or</p> <p>5 are they just assigned individual dockets?</p> <p>6 A. They are assigned to cases.</p> <p>7 Q. Assigned to cases. And do you handle</p> <p>8 that assignment yourself?</p> <p>9 A. I do.</p> <p>10 Q. Do -- do you have any -- an assistant</p> <p>11 district defender in area 22?</p> <p>12 A. I do.</p> <p>13 Q. And what does -- do you task the</p> <p>14 assistant district defender with?</p> <p>15 A. Currently she is -- it is Sarah Johnson</p> <p>16 is the deputy district defender.</p> <p>17 Q. Okay.</p> <p>18 A. And she is also MSPD's director of</p> <p>19 juvenile justice and policy. So she spends about</p> <p>20 50 percent of her time on that responsibility. The</p> <p>21 other 50 percent of her time is spent training the</p> <p>22 new attorneys.</p> <p>23 Q. Does she maintain a docket of cases?</p> <p>24 A. She had a docket prior to assuming this</p> <p>25 position, and she is still resolving many of those</p>	<p style="text-align: right;">Page 15</p> <p>1 A. So Sarah Johnson was our juvenile</p> <p>2 specialist. She's been trained as a juvenile</p> <p>3 specialist. So we're in the midst of a transition.</p> <p>4 Prior to her assuming this new position the cases</p> <p>5 were assigned either to her or to another attorney</p> <p>6 who had been trained in juvenile.</p> <p>7 We're now training an additional group</p> <p>8 of attorneys and I actually have a meeting today</p> <p>9 with those who are interested in becoming juvenile</p> <p>10 practitioners.</p> <p>11 Q. So currently aside from Sarah Johnson,</p> <p>12 are there any attorneys that are specifically</p> <p>13 designated to handle juvenile cases?</p> <p>14 A. Not only juvenile cases. So they would</p> <p>15 have juvenile cases, but also adult cases.</p> <p>16 Q. Okay. And you're anticipating the</p> <p>17 number of attorneys trained specifically for</p> <p>18 juvenile cases to increase after further training?</p> <p>19 A. Correct.</p> <p>20 Q. And -- but you don't anticipate having</p> <p>21 any of those attorneys exclusively working on</p> <p>22 juvenile cases, it will be in addition to adult</p> <p>23 cases, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. How many of your attorneys</p>
<p style="text-align: right;">Page 14</p> <p>1 cases. The hope is that she will not have a docket</p> <p>2 once those cases are resolved.</p> <p>3 Q. Okay. Do you maintain a docket of</p> <p>4 cases?</p> <p>5 A. I don't maintain a docket, but I have</p> <p>6 clients who have cases.</p> <p>7 Q. Okay. Do you know how many clients who</p> <p>8 have cases that you handle in any given year on</p> <p>9 average?</p> <p>10 A. I would say it averages anywhere</p> <p>11 between 15 to 30. Open at one time.</p> <p>12 Q. Right.</p> <p>13 A. So over the course of a year maybe 20</p> <p>14 to 40.</p> <p>15 Q. Do all -- so that would leave 28</p> <p>16 additional public defenders in your office; is that</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And do all the public defenders handle</p> <p>20 felony cases?</p> <p>21 A. Yes.</p> <p>22 Q. And all of them handle misdemeanor</p> <p>23 cases?</p> <p>24 A. Yes.</p> <p>25 Q. And how do you assign juvenile cases?</p>	<p style="text-align: right;">Page 16</p> <p>1 handle probation revocation cases?</p> <p>2 A. All of them.</p> <p>3 Q. All of them.</p> <p>4 A. Including myself.</p> <p>5 Q. How many handle direct appeals?</p> <p>6 A. We seldom handle direct appeals. There</p> <p>7 are times when there is a case that we lose at trial</p> <p>8 that we choose to keep the appeal ourself. I think</p> <p>9 we've done that three times in the last year.</p> <p>10 Q. So normally in cases that your public</p> <p>11 defenders have handled, your representation would</p> <p>12 end after filing the notice of appeal; is that</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then the appellate division would</p> <p>16 normally take over the case if it were to continue?</p> <p>17 A. Correct.</p> <p>18 Q. Correct. Are there any other types of</p> <p>19 cases that are handled by your office that I have</p> <p>20 not mentioned?</p> <p>21 A. We've filed several writs that have</p> <p>22 come out of felony cases.</p> <p>23 Q. Okay.</p> <p>24 A. We have handled some unconditional</p> <p>25 release cases and we have handled some habeas cases</p>

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<p style="text-align: right;">Page 17</p> <p>1 as a result of mental health confinement. And then</p> <p>2 we also have a few cases that we classify them as</p> <p>3 either witness or possible case where someone comes</p> <p>4 and applies for services, but a case has not yet</p> <p>5 been issued.</p> <p>6 Q. Okay. Trying to get a feeling for the</p> <p>7 experience level of the attorneys in your office.</p> <p>8 How -- how long is the most experienced lawyer in</p> <p>9 your office been practicing law?</p> <p>10 A. So that would be me.</p> <p>11 Q. Correct.</p> <p>12 A. Since 1980.</p> <p>13 Q. And then how about after you, who is</p> <p>14 the -- I guess the second most experienced?</p> <p>15 A. That would be Matthew Waltz, and he has</p> <p>16 been practicing for 13 years.</p> <p>17 Q. And then how long has the least</p> <p>18 experienced attorney in your office been practicing</p> <p>19 law?</p> <p>20 A. So we have three attorneys who were</p> <p>21 just licensed in October. Or September. I think</p> <p>22 they moved it up to September.</p> <p>23 Q. And how do the other attorneys fall in?</p> <p>24 Would you say the majority have more -- the majority</p> <p>25 of the rest of the attorneys have more or less than</p>	<p style="text-align: right;">Page 19</p> <p>1 the seriousness of the charges in -- in that case?</p> <p>2 A. Yes.</p> <p>3 Q. And do you also base your assignment on</p> <p>4 the experience level of the attorneys in your office</p> <p>5 that are receiving the case?</p> <p>6 A. Yes.</p> <p>7 Q. How about paralegals, how many</p> <p>8 paralegals do you have on staff in area 22?</p> <p>9 A. None.</p> <p>10 Q. None. How many investigators do you</p> <p>11 have on staff?</p> <p>12 A. Four.</p> <p>13 Q. Do the investigators work directly for</p> <p>14 the attorneys on a rolling basis as needed?</p> <p>15 A. The investigators are assigned to</p> <p>16 cases. So if an attorney requests investigation</p> <p>17 that is assigned to one of the investigators, and</p> <p>18 then that investigator remains the investigator for</p> <p>19 that case for any future investigation.</p> <p>20 Q. Are the investigators assigned to the</p> <p>21 case when the case is opened or is it assigned to</p> <p>22 the case on an as-needed basis?</p> <p>23 A. On an as-needed basis.</p> <p>24 Q. Okay.</p> <p>25 A. It has to be done by a request from the</p>
<p style="text-align: right;">Page 18</p> <p>1 ten years of experience practicing?</p> <p>2 A. Significantly less.</p> <p>3 Q. Significantly less. Okay. When you're</p> <p>4 assigning cases, can you go over how when new cases</p> <p>5 come in your process for assigning them to the</p> <p>6 attorneys in area 22?</p> <p>7 A. So when an application comes in it goes</p> <p>8 to a legal assistant.</p> <p>9 Q. Okay.</p> <p>10 A. And the legal assistant evaluates the</p> <p>11 application and does a Case.net search to find out</p> <p>12 more information about that case and about that</p> <p>13 person. Such as do we already represent them, do we</p> <p>14 represent a co-defendant, does that case -- that</p> <p>15 person have another case in which a private attorney</p> <p>16 is involved?</p> <p>17 And then based upon the information in</p> <p>18 the application and that Case.net search, that legal</p> <p>19 assistant makes an indigence determination. Once</p> <p>20 the indigence determination is made, the application</p> <p>21 as well as the complaint or information or</p> <p>22 indictment and the Case.net entries is provided to</p> <p>23 me and then I assign off of a rolling assignment</p> <p>24 sheet.</p> <p>25 Q. Do you base your assignment in part on</p>	<p style="text-align: right;">Page 20</p> <p>1 attorney.</p> <p>2 Q. Okay. How many administrative</p> <p>3 assistants do you have working in area 22?</p> <p>4 A. How do you define administrative</p> <p>5 assistants? So I have them classified in different</p> <p>6 positions.</p> <p>7 Q. Please discuss like how would -- how</p> <p>8 would your office, an employee that would handle</p> <p>9 administrative actions, I don't know if that's a</p> <p>10 clerk or what might have been a legal secretary or</p> <p>11 assistant --</p> <p>12 A. So I have an office manager.</p> <p>13 Q. Okay.</p> <p>14 A. And then five of our support staff are</p> <p>15 legal assistants and three are clerks.</p> <p>16 Q. Okay. So can you describe the</p> <p>17 responsibilities for the -- of the office manager?</p> <p>18 A. The office manager takes care of all</p> <p>19 the budgetary issues in terms of approving bills for</p> <p>20 payment by the office in Columbia, does all the</p> <p>21 contact with the building in terms of maintenance,</p> <p>22 keeps track of people's comings and goings, and also</p> <p>23 does some docket management for our felony docket in</p> <p>24 circuit court.</p> <p>25 Q. And your five support staff, how are</p>

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<p style="text-align: right;">Page 21</p> <p>1 they assigned? Are they assigned to work on cases?</p> <p>2 A. No. They are -- the legal assistants</p> <p>3 and the clerks all have specific jobs, which include</p> <p>4 docket management if they're a legal assistant, and</p> <p>5 then secretarial support to attorneys. And then we</p> <p>6 have one clerk who does the file closing, the</p> <p>7 archiving of files and several other</p> <p>8 responsibilities.</p> <p>9 Q. Are the -- who does the initial -- I</p> <p>10 guess if the right word is screening for indigency</p> <p>11 requirements, is that one of those five support</p> <p>12 staffs or three legal clerks?</p> <p>13 A. It's one of the legal assistants.</p> <p>14 Q. One of the legal assistants, okay. Are</p> <p>15 there any other employees that we have not mentioned</p> <p>16 that work in area 22?</p> <p>17 A. No. One of our attorneys is classified</p> <p>18 as a JDMSW.</p> <p>19 Q. Okay. What does the abbreviation JDMSW</p> <p>20 mean?</p> <p>21 A. So he is an attorney, but he is also --</p> <p>22 has a master's in social work.</p> <p>23 Q. Oh.</p> <p>24 A. So we transitioned an attorney position</p> <p>25 to that position so that we would have some social</p>	<p style="text-align: right;">Page 23</p> <p>1 for --</p> <p>2 A. I do.</p> <p>3 Q. Do you approve leave for your office?</p> <p>4 A. I do.</p> <p>5 Q. I didn't hear mention, do you have a</p> <p>6 specific position as a human resources manager, or</p> <p>7 does that fall within your purview as well?</p> <p>8 A. We have a human resources manager in</p> <p>9 Columbia.</p> <p>10 Q. Okay.</p> <p>11 A. But all of the hiring work that occurs</p> <p>12 in the local office, the deputy district defender</p> <p>13 and I do.</p> <p>14 Q. Do you draft attorney performance</p> <p>15 reviews?</p> <p>16 A. I do.</p> <p>17 Q. And how much time do you spend on</p> <p>18 administrative tasks versus substantive legal work?</p> <p>19 A. Can you define substantive legal work?</p> <p>20 Q. So if you're working with clients</p> <p>21 themselves and their legal issues or working either</p> <p>22 for yourself, clients that you're handling or</p> <p>23 clients that your attorneys are handling as opposed</p> <p>24 to running and administering the office from a</p> <p>25 budgeting, a scheduling, a hiring, a performance</p>
<p style="text-align: right;">Page 22</p> <p>1 work services within the office.</p> <p>2 Q. Does the JDMSW position carry a</p> <p>3 normal -- well, carry a caseload?</p> <p>4 A. He carries the caseload of any of our</p> <p>5 clients who are currently in treatment or diversion</p> <p>6 court, as well as he assists the attorneys who are</p> <p>7 dealing with either mental health issues or</p> <p>8 mitigation issues for their clients.</p> <p>9 Q. Can you describe your day-to-day</p> <p>10 responsibilities as district defender for area 22?</p> <p>11 A. Combination of client contact, case --</p> <p>12 personal case management, taking care of the</p> <p>13 administrative responsibilities in the office of</p> <p>14 authorizing payment of bills, approving E requests,</p> <p>15 assigning action items to investigators, speaking</p> <p>16 with attorneys concerning their cases, and working</p> <p>17 along with the circuit on circuit-wide issues.</p> <p>18 Q. Do you attend trials or I guess observe</p> <p>19 trials for any of your district defenders for</p> <p>20 evaluation purposes?</p> <p>21 A. I do.</p> <p>22 Q. And do you -- are you in charge of</p> <p>23 approving encumbrance requests?</p> <p>24 A. I am.</p> <p>25 Q. Do you approve requests for depositions</p>	<p style="text-align: right;">Page 24</p> <p>1 review, that would be more administrative.</p> <p>2 A. I would estimate 70 percent</p> <p>3 administrative, 30 percent client or legal.</p> <p>4 Q. Do you have some discretion with</p> <p>5 respect to setting policies in your office?</p> <p>6 A. Yes.</p> <p>7 Q. What kind of policies do you have</p> <p>8 discretion in setting?</p> <p>9 A. Dress code, coming and going, like</p> <p>10 office hours. Second chair expectations, things</p> <p>11 like that.</p> <p>12 Q. Are these policies written down and</p> <p>13 promulgated to your employees or -- or in a -- in a</p> <p>14 set -- I'm aware that the public defenders office</p> <p>15 sends things out to the various offices that they</p> <p>16 want policies they want set. Do you have any</p> <p>17 subsequent set of policies that get promulgated to</p> <p>18 the attorneys in your office?</p> <p>19 A. There's some local area policies that</p> <p>20 are available to all of the staff on the computer.</p> <p>21 Q. And how are the policies in your office</p> <p>22 developed?</p> <p>23 A. Through experience.</p> <p>24 Q. If I use the term vertical</p> <p>25 representation, do you have an understanding what</p>

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<p style="text-align: right;">Page 25</p> <p>1 that means?</p> <p>2 A. Yes.</p> <p>3 Q. And do -- does area 22 currently</p> <p>4 utilize vertical representation for clients?</p> <p>5 A. Yes.</p> <p>6 (Exhibit 11, Previously marked exhibit.)</p> <p>7 (Exhibit 12, Previously marked exhibit.)</p> <p>8 MR. MAUNE: Produce previously</p> <p>9 introduced exhibits 11 and 12.</p> <p>10 MS. SHIPMA: What did you say?</p> <p>11 MR. MAUNE: I'm going to produce</p> <p>12 previously used exhibits that are marked as Petsch</p> <p>13 Exhibit 11 and -- give you a copy. And then Petsch</p> <p>14 Exhibit 12. Take a minute to review and let me know</p> <p>15 when.</p> <p>16 THE WITNESS: Okay.</p> <p>17 Q. (By Mr. Maune) I'll start with</p> <p>18 Exhibit 11. Is this the -- a form that area 22 uses</p> <p>19 to screen potential clients for indigency?</p> <p>20 A. We've altered it a little bit.</p> <p>21 Q. Can you explain how it was altered?</p> <p>22 A. We put a really big arrow where it says</p> <p>23 applicant signature, and I think wrote something</p> <p>24 like you must sign here.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 27</p> <p>1 is indigent or not indigent?</p> <p>2 A. Correct.</p> <p>3 Q. And after this is completed, if they're</p> <p>4 determined to be indigent, a case would be opened?</p> <p>5 A. Yes.</p> <p>6 Q. And do you have an estimate of how many</p> <p>7 forms you receive that the case is determined that</p> <p>8 the potential client is not indigent or not</p> <p>9 qualified?</p> <p>10 A. I do not have that figure off the top</p> <p>11 of my head. I would tell you that there are a</p> <p>12 number of cases that are initially denied for</p> <p>13 probation violations because the court has not yet</p> <p>14 made a due process determination, and then the</p> <p>15 person may eventually be -- the court may eventually</p> <p>16 make that determination and be accepted, but I do</p> <p>17 not have a figure for how many are denied.</p> <p>18 Q. Does the court determination for due</p> <p>19 process violation put this determination on hold for</p> <p>20 determining indigency?</p> <p>21 A. The indigence determination is made.</p> <p>22 Q. Okay.</p> <p>23 A. The eligibility determination is that</p> <p>24 they're not eligible.</p> <p>25 Q. Okay. And do judges in area 22 assign</p>
<p style="text-align: right;">Page 26</p> <p>1 A. And then I believe because we receive</p> <p>2 many of our applications by mail there was</p> <p>3 information added as to how to return the</p> <p>4 application to us.</p> <p>5 Q. Okay. You've added mailing address</p> <p>6 for --</p> <p>7 A. Yes.</p> <p>8 Q. How do potential clients first get</p> <p>9 ahold of this form to complete if they're seeking</p> <p>10 representation?</p> <p>11 A. So they can download it off the web,</p> <p>12 off the public website. They can request it from</p> <p>13 the court or they can request it from a social</p> <p>14 worker at jail or they can come to the office if</p> <p>15 they are not in custody and ask for an application.</p> <p>16 Q. If the potential clients are in</p> <p>17 custody, does the jail mail or fax these back to</p> <p>18 your office for consideration?</p> <p>19 A. We pick up mail from the jail daily.</p> <p>20 Q. Okay.</p> <p>21 A. With no postage requirement.</p> <p>22 Q. Okay. And then one of the clerks</p> <p>23 reviews this form and makes a determination --</p> <p>24 A. Yes.</p> <p>25 Q. -- whether or not the potential client</p>	<p style="text-align: right;">Page 28</p> <p>1 your office to represent defendants even in cases</p> <p>2 where you've made a determination at least as to</p> <p>3 this form that they're not indigent?</p> <p>4 A. They don't assign -- they don't appoint</p> <p>5 us on anything.</p> <p>6 Q. They don't appoint you on anything.</p> <p>7 A. We do have an indigence docket in which</p> <p>8 they consider the appeals of our indigence</p> <p>9 determination.</p> <p>10 Q. And how often -- is it frequent that</p> <p>11 the indigence docket will determine that the</p> <p>12 potential defendant is -- is qualified for services</p> <p>13 from the public defenders office when a</p> <p>14 determination has been previously made that the</p> <p>15 potential client is not indigent?</p> <p>16 A. So we have the docket about once -- we</p> <p>17 have it once a month.</p> <p>18 Q. Okay.</p> <p>19 A. And at each docket approximately five</p> <p>20 to ten applicants are determined to be eligible that</p> <p>21 had not previously been determined to be eligible.</p> <p>22 Q. And on that docket or hearing of the</p> <p>23 five to ten that are determined to be eligible, how</p> <p>24 many were considered, estimate?</p> <p>25 A. I don't understand.</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 Q. How many -- how many potential cases 2 for that docket are heard where five to ten -- 3 A. Probably ten to 20. So about 4 50 percent of the cases. 5 Q. Okay. You previously stated you handle 6 15 to 30 cases open at any one time; is that 7 correct? 8 A. Personally? 9 Q. Personally. 10 A. Yes. 11 Q. And are these particular types of cases 12 that you handle? 13 A. They tend to be. I mean, there's not a 14 preplan that this is the type of case I will get, 15 but I tend to have the cases where there are serious 16 mental health issues and there's questions of 17 whether or not the person is competent to proceed, 18 and because we have so few attorneys with experience 19 I have a large number of homicide cases. 20 (Exhibit 28, Previously marked exhibit.) 21 MR. MAUNE: This has previously been 22 introduced as Wallace Exhibit Number 28. 23 THE WITNESS: Do you want these back? 24 MR. MAUNE: You can keep them there. 25 Wallace Number 28. Do you have that?</p>	<p style="text-align: right;">Page 31</p> <p>1 per year on cases? 2 A. Depends on where the attorney is in 3 their stage. So if it's an attorney who is trying a 4 lot of cases they probably spend more than that. If 5 it's an attorney who is brand-new they might spend 6 close to that. 7 Q. And so the attorneys -- how long do you 8 think -- back up. 9 How long do you think attorneys in your 10 office would be prepared or trained to try many 11 cases? How long do you think that process takes? 12 MR. MOORE: I guess I'll object to the 13 form of the question, but you can go ahead and -- 14 Q. (By Mr. Maune) Yeah. 15 A. And I'm -- I'm not certain I understand 16 your question. 17 Q. So from when a new public defender 18 starts as a one, how long before they are 19 significantly trained and ready to handle a 20 significant number of cases where you think they 21 might be exceeding that 1752 number? 22 A. How long do I think they should be 23 trained before they're significantly ready? About a 24 year to 18 months. How long do they practice before 25 they begin trying cases, often less than that,</p>
<p style="text-align: right;">Page 30</p> <p>1 MS. SHIPMA: Let me see. Yeah. 2 MR. MOORE: Thanks. 3 Q. (By Mr. Maune) Have you seen this 4 document before? 5 A. I have. 6 Q. And what is this document? 7 A. The Missouri State Public Defender 8 caseload crisis protocol that was issued in 2007. 9 Q. Did you participate in this commission 10 study in any way? 11 A. The 2006 study? No. 12 Q. I guess you didn't start until 2007. 13 A. Right. 14 Q. Okay. On page five, if you can turn to 15 page five, it lists attorney hours available for 16 casework, and it comes up with a figure of 1,752 17 average available hours per attorney per year. 18 Would you -- do you believe this is an accurate 19 number of attorney hours for the attorneys in area 20 22? 21 A. The 2340 or the 1752? 22 Q. 1752. 23 A. And what do you mean by accurate? 24 Q. Do you find that your attorneys spend 25 more or less than 1752 average hours per attorney</p>	<p style="text-align: right;">Page 32</p> <p>1 sometimes that amount of time. So we've had 2 attorneys in their first year in the office try 3 five, six, seven jury trials. In their first year 4 of practice also. 5 Q. And do you find it common for attorneys 6 in your office to work overtime or exceed the 1750 7 number? 8 A. Yes. 9 Q. Do you find it's common for them to 10 work on weekends? 11 A. Yes. 12 Q. Do attorneys in your office receive 13 extra compensation for either overtime or working 14 weekends? 15 A. No. 16 (Exhibit 21, Previously marked exhibit.) 17 MR. MAUNE: I'm going to use previously 18 marked Exhibit 21, although we're trying to give the 19 previous copy we used. I'll produce both. Had a 20 typographical -- the printout didn't go well, so 21 it's the same document, but I have a better produced 22 copy. 23 THE WITNESS: Okay. 24 MR. MOORE: Is this all the same thing? 25 MR. MAUNE: Yeah. It should be.</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 MR. MOORE: Is this the same thing?</p> <p>2 MR. MAUNE: It's the same. It's just</p> <p>3 the cover.</p> <p>4 MR. MOORE: Okay. Oh, I got you. All</p> <p>5 right.</p> <p>6 Q. (By Mr. Maune) Have you seen this</p> <p>7 document before?</p> <p>8 A. Not in the complete form, no.</p> <p>9 Q. Do you provide any information that</p> <p>10 gets incorporated into these reports?</p> <p>11 A. Our database does. So we provide -- we</p> <p>12 put -- input information into the database, which is</p> <p>13 then used in these reports.</p> <p>14 Q. Okay. I'd like to turn to page seven.</p> <p>15 It says title State Public Defender Cumulative</p> <p>16 Caseload Metrics Fiscal Year 2017. And -- and if I</p> <p>17 -- I look at -- there's a column that has District</p> <p>18 22 listed, St. Louis City, and it states 30</p> <p>19 attorneys. Is that accurate?</p> <p>20 A. That's accurate.</p> <p>21 Q. And it says -- this is for last fiscal</p> <p>22 year, right?</p> <p>23 A. Yes.</p> <p>24 Q. So for fiscal year '17. There were</p> <p>25 4262 cases initiated. Does that appear accurate?</p>	<p style="text-align: right;">Page 35</p> <p>1 capacity of 62,400 hours.</p> <p>2 Q. Do you believe that figure to</p> <p>3 accurately portray the workload for your office?</p> <p>4 MR. MOORE: Just object to the form of</p> <p>5 the question. I think it's pretty vague. Subject</p> <p>6 to that, you can respond of course.</p> <p>7 A. We're overloaded, so it accurately</p> <p>8 portrays that, yes.</p> <p>9 Q. (By Mr. Maune) Okay. Do you receive</p> <p>10 reports quarterly that would show the district</p> <p>11 defender this figure for their particular office?</p> <p>12 A. No.</p> <p>13 MR. MAUNE: This would be the first new</p> <p>14 document, so it would be Fox 32. I'm introducing</p> <p>15 what is identified as Public Defender document Bates</p> <p>16 number 0039426. It's titled Order Concerning</p> <p>17 Probation Revocation Hearing.</p> <p>18 (WHEREIN, Exhibit 32, Order Concerning</p> <p>19 Probation Revocation Hearing, was marked for</p> <p>20 identification by the Court Reporter.)</p> <p>21 Q. (By Mr. Maune) Are you familiar with</p> <p>22 this form?</p> <p>23 A. I am.</p> <p>24 Q. Can you please explain what it is?</p> <p>25 A. We call it the due process order that</p>
<p style="text-align: right;">Page 34</p> <p>1 A. It does.</p> <p>2 Q. And has a number of new cases and then</p> <p>3 it comes up with a net case units. Do you see that?</p> <p>4 It says 89,515?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know how that number or what --</p> <p>7 or what the term net case unit means?</p> <p>8 A. I believe it's the number of cases</p> <p>9 initiated minus the number of cases withdrawn from</p> <p>10 within the first 30 days times the RubinBrown metric</p> <p>11 for number of hours per case.</p> <p>12 Q. Okay. And then there's a column that</p> <p>13 says -- it's third to the last, and it says</p> <p>14 capacity, and it says 62,400. Do you know how that</p> <p>15 number is calculated?</p> <p>16 A. Number of attorneys times a number of</p> <p>17 hours per year.</p> <p>18 Q. And does that number at least seem</p> <p>19 accurate?</p> <p>20 A. Yes.</p> <p>21 Q. And finally, it has a number or</p> <p>22 percentage of capacity and it's 163.5 percent. Does</p> <p>23 that -- do you understand what that's trying to</p> <p>24 portray?</p> <p>25 A. That we are 163.5 percent of the</p>	<p style="text-align: right;">Page 36</p> <p>1 the 22nd Judicial Circuit uses to make a -- to</p> <p>2 notify us of a determination they have made whether</p> <p>3 or not the defendant in a probation violation</p> <p>4 hearing is entitled to counsel.</p> <p>5 Q. And did you have a role in creating</p> <p>6 this -- this form?</p> <p>7 A. I did.</p> <p>8 Q. And can you briefly explain how the</p> <p>9 process works for using this form?</p> <p>10 A. If a judge has a probationer who he</p> <p>11 would like to call before him for a violation of his</p> <p>12 probation conditions, the judge makes a</p> <p>13 determination based on one of the factors included</p> <p>14 in this form as to whether or not that probationer</p> <p>15 needs counsel. And then files this form in the</p> <p>16 probationer's case and sends it to our office.</p> <p>17 Q. And the judge that is filing this form</p> <p>18 or -- or using this form does so without at least</p> <p>19 initially the public defender reviewing the form, so</p> <p>20 the -- so the judge would have the case come in that</p> <p>21 they have a probation -- or that they want to</p> <p>22 consider revoking the probation, they would look at</p> <p>23 the facts of the case, the judge would complete this</p> <p>24 form, and then what happens to the form after that?</p> <p>25 MR. MOORE: Also object to the form of</p>

<p style="text-align: right;">Page 37</p> <p>1 the question. I think it's compound and vague.</p> <p>2 Subject to that, you can respond.</p> <p>3 A. So hopefully they send it to us.</p> <p>4 Q. (By Mr. Maune) Okay.</p> <p>5 A. And if we have an application from that</p> <p>6 probationer and we have determined that they are</p> <p>7 indigent, then we would assign an attorney to the</p> <p>8 case who would enter their appearance.</p> <p>9 Q. And you would only assign them an</p> <p>10 attorney if one of the boxes is checked in the upper</p> <p>11 portion of the form under label one; is that</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. So if -- is it any -- would you only --</p> <p>15 would the -- would you assign an attorney if any one</p> <p>16 of the boxes is checked or could there be multiple</p> <p>17 boxes checked or -- I mean, I assume it could be</p> <p>18 that the defendant does not appear to -- capable of</p> <p>19 speaking effectively and they made a timely or</p> <p>20 culpable claim. It just has to be one of these; is</p> <p>21 that correct?</p> <p>22 A. It's usually just one, but it can</p> <p>23 sometimes be more than one.</p> <p>24 Q. If -- does -- are there any times that</p> <p>25 you receive this form from a judge where one of the</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. On the first line in the first box it</p> <p>2 says (quote as read):</p> <p>3 Defendant is currently on an SIS</p> <p>4 probation which the court may revoke.</p> <p>5 Can you explain what SIS probation is?</p> <p>6 A. Suspended imposition of sentence, so</p> <p>7 the court has not given the person a sentence.</p> <p>8 There's been no formal sentencing of the</p> <p>9 probationer.</p> <p>10 Q. Okay. And then in the boxes in box two</p> <p>11 below it has the term SES. (Quote as read):</p> <p>12 Defendant has an SES and agrees that he</p> <p>13 violated his probation.</p> <p>14 Can you please explain for the record</p> <p>15 what SES is?</p> <p>16 A. Suspended execution of sentence where</p> <p>17 the court has imposed a sentence but has not yet</p> <p>18 executed it. So there would be a term of years or a</p> <p>19 fine or a term of days which the court has imposed</p> <p>20 but has not executed.</p> <p>21 Q. How did you come up with the different</p> <p>22 conditions for I guess blocks one and two?</p> <p>23 A. I didn't come up with them. Judge</p> <p>24 Julian Bush and Judge Philip Heagney are the two who</p> <p>25 actually created the form, and they created the form</p>
<p style="text-align: right;">Page 38</p> <p>1 boxes is checked below, but the facts of the case</p> <p>2 suggest that the person on probation should have an</p> <p>3 attorney present?</p> <p>4 MR. MOORE: Also objection to the form</p> <p>5 of the question. I think that's vague,</p> <p>6 argumentative, calls for speculation as well.</p> <p>7 Subject to that, you can respond.</p> <p>8 A. So we wouldn't have contact with that</p> <p>9 probationer to know that fact. If we are</p> <p>10 representing the probationer on another case, we may</p> <p>11 then bring this to the court's attention that we</p> <p>12 would like them to make a due process determination,</p> <p>13 but if the person has just a probation revocation,</p> <p>14 we wouldn't know about it.</p> <p>15 Q. (By Mr. Maune) Okay. So you</p> <p>16 wouldn't -- you wouldn't know about it because you</p> <p>17 wouldn't have received an indigence request from</p> <p>18 them yet or --</p> <p>19 A. Well, we may have received an indigence</p> <p>20 request and we would -- if we did not have this form</p> <p>21 with one of the boxes in number one checked, we</p> <p>22 would tell the applicant to speak to the judge about</p> <p>23 whether or not due process requires counsel. And we</p> <p>24 would initially turn them down, not because they're</p> <p>25 not indigent, but because they're not eligible.</p>	<p style="text-align: right;">Page 40</p> <p>1 based upon the case law.</p> <p>2 Q. Has this form ever been challenged</p> <p>3 subsequently to its use?</p> <p>4 A. No.</p> <p>5 Q. And how long have these forms been in</p> <p>6 use for?</p> <p>7 A. The initial one was created in 2012</p> <p>8 after the Waters hearing. It was a little bit</p> <p>9 different at that time because at that time we were</p> <p>10 also limiting probation violation cases being</p> <p>11 accepted for other reasons.</p> <p>12 Q. And what was area 22's policies prior</p> <p>13 to the Waters decision?</p> <p>14 A. On probation violation cases?</p> <p>15 Q. Of probation violation cases.</p> <p>16 A. That if the person applied and was</p> <p>17 indigent, that we would enter an attorney's</p> <p>18 appearance.</p> <p>19 Q. And then subsequent to the Waters</p> <p>20 decision?</p> <p>21 A. Well, it didn't just come from the</p> <p>22 Waters decision. It came from the change in the</p> <p>23 statute in terms of what cases were eligible for</p> <p>24 public defender representation. So when 600 I think</p> <p>25 it's 046, 042 was changed, then this was consistent</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 with that.</p> <p>2 Q. To your knowledge, do any other areas</p> <p>3 use either this form or a version of this form in</p> <p>4 making decisions regarding probation revocation</p> <p>5 hearings?</p> <p>6 A. I don't know. I know we have provided</p> <p>7 it to judges in other circuits when we have been</p> <p>8 asked to handle conflict cases in those circuits</p> <p>9 that were probation violations.</p> <p>10 Q. Has the -- the implementation of these</p> <p>11 procedures with using this form and the initial</p> <p>12 determinations reduced attorney workload for area 22</p> <p>13 public defenders?</p> <p>14 A. So prior to the use of this form we</p> <p>15 opened approximately a thousand probation violation</p> <p>16 cases a year. After this form was implemented that</p> <p>17 number was reduced to about 500. It has slowly</p> <p>18 crept back up, and I believe now we're on pace to</p> <p>19 open probably 750 to 800 probation violations a</p> <p>20 year.</p> <p>21 Q. And when the number of probation</p> <p>22 violation cases that you have opened this year is</p> <p>23 creeping up, do you have a sense whether that's</p> <p>24 because more defendants have a right to an attorney</p> <p>25 and according to this determination or is it just</p>	<p style="text-align: right;">Page 43</p> <p>1 A. No.</p> <p>2 Q. Having reviewed the con -- the content</p> <p>3 of it, does this document specify the minimum client</p> <p>4 contact times promulgated by the Missouri Public</p> <p>5 Defenders Office?</p> <p>6 A. Yes.</p> <p>7 Q. Do you monitor client contact time for</p> <p>8 the attorneys in area 22?</p> <p>9 A. I don't monitor on a daily basis, no.</p> <p>10 The attorneys are aware of the client contact</p> <p>11 requirements. When they're reviewed for appraisal I</p> <p>12 review their -- some of their cases randomly, but I</p> <p>13 do not look on a daily basis to see if they are</p> <p>14 meeting this requirement. If I have a complaint</p> <p>15 from a client about lack of contact, then I would</p> <p>16 review it.</p> <p>17 Q. What do you consider a qualifying</p> <p>18 contact? And I'll start off with a client that's in</p> <p>19 custody.</p> <p>20 A. Seeing the client in jail.</p> <p>21 Q. And how about a client that's out of</p> <p>22 custody?</p> <p>23 A. Seeing the client either in office or</p> <p>24 for a meeting. Sometimes we go to their home, but</p> <p>25 generally it would be in the office.</p>
<p style="text-align: right;">Page 42</p> <p>1 the number of cases that the courts are seeing are</p> <p>2 going up?</p> <p>3 MR. MOORE: Just object to the form and</p> <p>4 also to the foundation, I think calls for</p> <p>5 speculation, but you can go ahead.</p> <p>6 A. I think it's a combination of two</p> <p>7 things. One is that we've had a substantial number</p> <p>8 of experienced judges retire and the judges who are</p> <p>9 newer to the bench would rather have an attorney</p> <p>10 there, and then also because the number of cases has</p> <p>11 increased.</p> <p>12 Q. (By Mr. Maune) Do you have any way to</p> <p>13 monitor the outcome for probation revocation</p> <p>14 hearings for cases in which attorneys are not</p> <p>15 assigned?</p> <p>16 A. No.</p> <p>17 (Exhibit 1, Previously marked exhibit.)</p> <p>18 MR. MAUNE: I'll introduce what's been</p> <p>19 previously introduced as Petsch Document 1.</p> <p>20 MR. MOORE: Can I get a copy of that</p> <p>21 probation form, not now necessarily, but at a break</p> <p>22 or something?</p> <p>23 MR. MAUNE: Yeah.</p> <p>24 Q. (By Mr. Maune) Have you seen this</p> <p>25 document before?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. To the best of your knowledge, do the</p> <p>2 public defenders in area 22 meet the expectations</p> <p>3 that are delineated in this memo?</p> <p>4 A. No.</p> <p>5 Q. And do you have an idea why they cannot</p> <p>6 meet these limitations?</p> <p>7 A. Because the amount of time they spend</p> <p>8 either in court on cases that are before the court</p> <p>9 or in preparation for cases that are assigned out to</p> <p>10 trial or in other client contacts, it's -- it's not</p> <p>11 possible.</p> <p>12 Q. Do the -- for the -- for the clients</p> <p>13 that are in custody, is there a confidential place</p> <p>14 in the jails that are in St. Louis city for the</p> <p>15 attorneys to meet with their clients?</p> <p>16 A. There is a place. The jail has deemed</p> <p>17 it confidential, but it is not confidential.</p> <p>18 Q. And to your best of your ability, why</p> <p>19 is that place not confidential?</p> <p>20 A. So we have two jails in the city of</p> <p>21 St. Louis. One is the St. Louis City Justice</p> <p>22 Center. And the professional visiting booth there,</p> <p>23 you can hear what is being said in the booth either</p> <p>24 outside in the social visiting area or inside in the</p> <p>25 cell area depending on which side you're on.</p>

11 (Pages 41 to 44)

1 So you can either hear what the
2 defendant is saying or what the attorney is saying.
3 There is also a space for contact visits, but the
4 jail staff has access to those contact visit rooms
5 and can listen in to those contact visit rooms.
6 In the other jail, which is the
7 St. Louis medium security institution, the -- there
8 are two professional booths that have been there for
9 a significant period of time and directly behind
10 them sits a correctional officer from the jail who
11 can hear everything that is being said, as well as a
12 number of other defendants who are waiting to see
13 their attorney.
14 That's in the two good booths. In the
15 other booths you're literally talking through
16 cardboard and there can be eight or nine attorneys
17 in there at one time. And so you can hear anything
18 that anybody is saying.
19 **Q. Is there a way for an attorney who is**
20 **not at the jail to contact a client in custody via a**
21 **phone?**
22 A. It -- it happens on rare occasion where
23 you can reach their social worker and set up a phone
24 call to the social worker's phone.
25 **Q. The social worker that's in the prison?**

1 A. The jail social worker, yes.
2 **Q. Okay. Do the clients in custody have**
3 **an ability to call their attorney from jail the**
4 **opposite? So one is the attorney calling in and --**
5 A. No.
6 **Q. They don't have any way to contact**
7 **their attorney?**
8 A. No.
9 **Q. And is that due to cost or just they're**
10 **prohibited from using any form of communication?**
11 A. The phone system is set up so it will
12 not ring into our office.
13 **Q. So will it ring into -- so will the**
14 **phone system in the jail ring into other attorney --**
15 **private counsel office?**
16 A. Yes.
17 **Q. But it's -- so what you're saying is**
18 **there's a technical limitation on the phone system**
19 **that prohibits phone calls from either prison --**
20 A. Jail.
21 **Q. -- either jail in St. Louis city from**
22 **ringing into the area 22 office?**
23 A. It's not technical. It was done -- I
24 mean, it's done technically, but it was done on
25 purpose.

1 **Q. And have you communicated this issue**
2 **with jail supervisor or --**
3 A. We requested it.
4 **Q. Oh, you requested it.**
5 A. Yes.
6 **Q. And what was the purpose of the**
7 **request?**
8 A. The phones rang nonstop with persons
9 calling in with the exact same question, and it took
10 an entire support staff person's day simply to
11 answer those phone calls, and as a result no other
12 phone calls could get into our office and attorneys
13 could not use the phone system to make calls out
14 because the phones were clogged from the phone calls
15 from the jail. And there was no limitation in the
16 jail as to how often a person could use the phones.
17 **Q. Oh. So the -- there was -- there's no**
18 **limitation to how many times they could call and**
19 **keep calling your office, so the phones would --**
20 **before the -- the limitation was put in place would**
21 **literally be ringing off the hook with or clogging**
22 **all the lines?**
23 A. Yes.
24 **Q. While your support staff try and manage**
25 **who the calls are going to or deal with the calls?**

1 A. Correct.
2 **Q. Do you know if any other district**
3 **defenders have implemented similar procedures?**
4 A. I don't believe so, but I don't know
5 for certain.
6 **Q. If -- if a -- an attorney in your**
7 **office is calling to reach a client that's**
8 **incarcerated and it's set up by a social worker, is**
9 **that phone call confidential?**
10 A. No.
11 **Q. And why not?**
12 A. The social worker is present.
13 **Q. Do you know if anyone else is present**
14 **during that call?**
15 A. Not to my knowledge.
16 **Q. Do you know if that call is monitored**
17 **at all by the jail?**
18 A. It's not on the jail monitoring system.
19 It's on the private line -- not a private line, but
20 a jail line.
21 **Q. Okay. Does area 22 have any procedures**
22 **in place for dealing with immigration consequences**
23 **for criminal charges for your clients?**
24 A. So we do education on immigration
25 issues on a regular basis, and we have contact with

<p style="text-align: right;">Page 49</p> <p>1 Catholic Legal Assistance Ministries, which is</p> <p>2 located at Saint Louis University Law School, and</p> <p>3 their immigration attorney provides assistance to us</p> <p>4 for our clients at no cost.</p> <p>5 Q. How would immigration issues arise with</p> <p>6 dealing with your clients or your attorneys'</p> <p>7 clients?</p> <p>8 A. They could have collateral consequences</p> <p>9 of deportation.</p> <p>10 Q. And how available are these legal</p> <p>11 assistants or -- are there attorneys at Saint Louis</p> <p>12 University that help you out?</p> <p>13 A. Yes.</p> <p>14 Q. How available are they to help?</p> <p>15 A. They're pretty good about returning</p> <p>16 calls, and they've also provided us with an</p> <p>17 educational document that we have available for the</p> <p>18 attorneys.</p> <p>19 Q. How often do immigration issues arise</p> <p>20 for your clients?</p> <p>21 A. I would probably say less than five</p> <p>22 percent of the cases.</p> <p>23 Q. Do you have any interpreters on staff</p> <p>24 at the public defenders office?</p> <p>25 A. No, not on staff.</p>	<p style="text-align: right;">Page 51</p> <p>1 MR. MAUNE: All right.</p> <p>2 VIDEOGRAPHER: The time is 9:58. We</p> <p>3 are off the record.</p> <p>4 (WHEREIN, a recess was taken.)</p> <p>5 VIDEOGRAPHER: The time is 10:09. We</p> <p>6 are back on the record.</p> <p>7 Q. (By Mr. Maune) I'd like to talk about</p> <p>8 initial hearings for a little bit. At what point is</p> <p>9 a defendant first brought before a judge?</p> <p>10 A. For the initial hearing, which is</p> <p>11 usually 24 hours after they are booked on a case.</p> <p>12 It can be longer than that if they're booked on a</p> <p>13 Friday night or Friday day.</p> <p>14 Q. And are they -- if they are indigent,</p> <p>15 do they have a defendant representing them at this</p> <p>16 initial hearing?</p> <p>17 A. They do not have an attorney at the</p> <p>18 initial hearing.</p> <p>19 Q. Is bail set at this initial hearing in</p> <p>20 area 22?</p> <p>21 A. The bail already is set at the time</p> <p>22 that the warrant is issued. So when the case is</p> <p>23 issued it is taken to the judge who is on duty to</p> <p>24 sign a warrant and to set bail.</p> <p>25 Q. And does the judge use a bail schedule?</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. How often do you have a need for</p> <p>2 interpreters when dealing with your clients?</p> <p>3 A. Not that frequently. I do have one</p> <p>4 attorney who speaks Spanish who is new to the office</p> <p>5 who I'm attempting to assign some of the Spanish</p> <p>6 speaking clients to. I would say ten to 15 clients</p> <p>7 a year are in need of interpreters.</p> <p>8 Q. And are there any other languages other</p> <p>9 than Spanish that you encounter for clients in your</p> <p>10 office?</p> <p>11 A. Bosnian, Vietnamese. We've had some</p> <p>12 African dialects that have been difficult to find</p> <p>13 interpreters for. Those are the main ones.</p> <p>14 Q. And if you have a client that comes in</p> <p>15 that speaks Vietnamese, do you -- do the attorneys</p> <p>16 submit a request to -- to get an interpreter to be</p> <p>17 able to prepare the case?</p> <p>18 A. Yes.</p> <p>19 Q. And how often are those requests</p> <p>20 approved?</p> <p>21 A. They're always approved if they're</p> <p>22 made.</p> <p>23 MR. MAUNE: Okay. We've been going</p> <p>24 about an hour. Good time for a break?</p> <p>25 THE WITNESS: Sure.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. No. There's no official bail schedule.</p> <p>2 There is some informal bail schedules for certain</p> <p>3 crimes.</p> <p>4 Q. Can the bail amount be changed after</p> <p>5 that point?</p> <p>6 A. Yes.</p> <p>7 Q. And how would that bail amount be</p> <p>8 changed?</p> <p>9 A. By a motion to review the conditions of</p> <p>10 release.</p> <p>11 Q. And is that motion filed after the</p> <p>12 initial hearing?</p> <p>13 A. Yes. If the person had an attorney it</p> <p>14 could be filed at that point.</p> <p>15 Q. Right.</p> <p>16 A. So some private counsel make requests</p> <p>17 at that point.</p> <p>18 Q. Can defendants plead guilty at their</p> <p>19 initial hearing if they're unrepresented?</p> <p>20 A. No. They can't plead guilty even if</p> <p>21 they're represented at their initial hearing.</p> <p>22 Q. Okay.</p> <p>23 A. Or they could. There just wouldn't be</p> <p>24 anybody paying attention to it.</p> <p>25 Q. Are all these initial hearings live or</p>

13 (Pages 49 to 52)

1 are any done by video?

2 A. They're all done by video.

3 **Q. They're all done by --**

4 A. With the exception of sometimes if
5 there is someone who is clearly mentally ill the
6 court tries to bring them in to court in person.

7 **Q. Who makes the determination that the
8 client is clearly mental ill?**

9 A. Evidently there's communication between
10 the jail and the court. And it doesn't happen very
11 often.

12 **Q. So at what point after this initial
13 hearing does your office get involved with a case?**

14 A. After we receive an application and
15 determine that the person is indigent.

16 **Q. We'll talk a little bit about
17 discovery. Do you have any sense for the percentage
18 of cases that your attorneys handle in which they
19 interview witnesses?**

20 A. I would guess 25 percent, maybe
21 30 percent.

22 **Q. Interview the victim or the complaining
23 witness?**

24 A. Are you -- when you say witnesses --

25 **Q. How often -- yeah, how --**

1 **Q. Cases that go to trial?**

2 A. In cases that go to trial, probably
3 25 percent of those cases.

4 **Q. How often in cases that go to trial do
5 your attorneys or investigators investigate a
6 client's alibi?**

7 A. Whenever one is provided.

8 **Q. How often do attorneys in your office
9 investigate police conduct in cases that go to
10 trial?**

11 A. When you say police conduct, what are
12 you talking about?

13 **Q. If there's any improprieties alleged by
14 the defendant, does your office have the ability to
15 investigate those allegations?**

16 A. So we do depositions of police
17 officers --

18 **Q. Okay.**

19 A. -- who are main witnesses in cases on a
20 pretty regular basis, and file motions to suppress
21 based upon, you know, Fourth Amendment violations,
22 Fifth Amendment violations by those police officers.
23 We do not -- we have not been successful I should
24 say in obtaining internal affairs reports about
25 those officers, but we have attempted.

1 A. -- you're -- you're differentiating
2 from complaining witness?

3 **Q. Right. Initially the witnesses who
4 might be witnesses, but they're not the complaining
5 witness or victim.**

6 A. So witnesses who are not the
7 complaining witness, it's probably less than
8 30 percent then.

9 **Q. Okay.**

10 A. And then in cases where they're
11 interviewing the complaining witness, I would say
12 it's about 30 percent.

13 **Q. About 30 percent.**

14 A. Of the cases that have complaining
15 witnesses. We have a large number of gun and drug
16 case in which the only witnesses are police
17 officers.

18 **Q. Okay. How often do your attorneys in
19 -- in area 22 visit the crime scene?**

20 A. I would say fewer than 20 percent.

21 **Q. How often do your attorneys and/or
22 investigators identify witnesses not previously
23 mentioned in a police report?**

24 A. In cases overall or in cases that
25 actually go to trial?

1 **Q. How often do your attorneys conduct
2 depositions in cases that go to trial?**

3 A. Oh, the cases that go to trial, I would
4 say 80 to 90 percent. And when you're talking about
5 that 25 to 30 percent, are those for cases that go
6 to trial in terms of talking to the witnesses or
7 complaining witnesses or just in all cases?

8 **Q. Well, if you give both, so in all cases
9 was that less than 30 percent and greater than
10 30 percent for --**

11 A. Significantly greater than 30 percent
12 in cases that go to trial.

13 **Q. Okay.**

14 A. I would say we don't have a case that
15 goes to trial where there is a nonpolice officer
16 complaining witness where that person has not either
17 been interviewed or deposed.

18 **Q. How often -- in cases that do not go to
19 trial, how often do your attorneys take depositions?**

20 A. We did 300 depositions in fiscal year
21 2017 and had 150 cases sent out to trial. So
22 percentage wise, I don't know, but about a hundred,
23 150 depositions in cases that did not go to trial.

24 **Q. And that's out of roughly --**

25 A. Well, it's not out of that number

<p style="text-align: right;">Page 57</p> <p>1 because that number includes cases that can't go to 2 a jury trial.</p> <p>3 Q. Right. Do you have a sense out of the 4 -- I guess the 4,262 cases that were initiated, what 5 percentage of those are -- can go to a jury trial?</p> <p>6 A. So you would subtract probation 7 violations and juvenile cases.</p> <p>8 Q. Okay.</p> <p>9 A. And then you would also have to 10 subtract the cases where we withdrew before 11 adjudication. And I would guess that those three 12 figures come to 1,200 to 1,500. Probably closer to 13 1,200. About 3,000 cases left.</p> <p>14 Q. Of the cases that go to trial, how 15 often do your attorneys utilize expert witnesses?</p> <p>16 A. Not often. We've utilized iden -- 17 eyewitness identification experts and mental health 18 experts. I think we have secured some medical 19 experts and some fingerprint analysis.</p> <p>20 Q. When you say not often, is that -- is 21 there a reason why experts are not utilized?</p> <p>22 A. They don't add value to the case.</p> <p>23 Q. Besides eyewitness identification 24 experts and mental health experts, are there any 25 other types of experts that your attorneys would --</p>	<p style="text-align: right;">Page 59</p> <p>1 experts for cases?</p> <p>2 A. Yes.</p> <p>3 Q. Is there a monetary amount or is it for 4 all experts?</p> <p>5 A. For all experts. Some of them then 6 require second-level approval if they are over \$500 7 or if it's a homicide case.</p> <p>8 Q. And who approves the secondary -- 9 second-level approval for those types of cases?</p> <p>10 A. The division director.</p> <p>11 Q. Have you had cases where you've 12 requested experts that require secondary approval 13 that were denied for some reason?</p> <p>14 A. Yes.</p> <p>15 Q. And what were the reasons stated for 16 those denials?</p> <p>17 A. Generally they're in the mental health 18 area, and it's usually a request to look for an 19 expert who is not as expensive. There's fortunately 20 -- in St. Louis there's a number of experts 21 available, so we try and use the ones who do not 22 cost as much. And sometimes it's because of a lack 23 of a clear reason for the mental health expert.</p> <p>24 Q. Do you have a list of experts for your 25 attorneys to use?</p>
<p style="text-align: right;">Page 58</p> <p>1 could utilize on a case?</p> <p>2 A. So we've -- we have utilized also 3 medical experts, so in shaken baby cases, for 4 instance, or child death cases. DNA, we've had 5 cases reviewed for DNA analysis. We have had hired 6 experts to look at handwriting.</p> <p>7 We've hired experts to look at 8 ballistics and we have hired experts to look at 9 fingerprints. Those are the only ones that come to 10 mind. And then mitigation is another area, which 11 could involve a mental health person or could 12 involve other type of expert.</p> <p>13 Q. For a mitigation expert, would that 14 utilize a social worker?</p> <p>15 A. A social worker or someone who's in the 16 community, those are used most often in juvenile 17 certification cases or in Miller cases.</p> <p>18 Q. Do you have a specific budget for area 19 22 for the hiring of experts?</p> <p>20 A. The system comes up with a budget, but 21 the money then goes through the Columbia office. So 22 it's not a budget that we keep close tabs on. I 23 think there were different budgets. There's one for 24 homicide cases and one for nonhomicide cases.</p> <p>25 Q. Do you have to approve the hiring of</p>	<p style="text-align: right;">Page 60</p> <p>1 A. The system has a database of experts.</p> <p>2 Q. And who comes up with the experts that 3 are in your system?</p> <p>4 A. So once somebody has used somebody 5 they're in the system.</p> <p>6 Q. Okay.</p> <p>7 A. We've gone beyond what's in the system 8 when there's no one in the system that meets what we 9 need.</p> <p>10 Q. Does the system provide any details on 11 the quality of the experts or is it just a --</p> <p>12 A. No.</p> <p>13 Q. -- contact information?</p> <p>14 A. Just contact information.</p> <p>15 Q. How frequently do you request -- do 16 your attorneys request discovery from the state in 17 your cases?</p> <p>18 A. In a hundred percent of the cases with 19 the exception of probation violations.</p> <p>20 Q. How frequently do your attorneys file 21 discovery-related motions?</p> <p>22 A. All of the cases other than probation 23 violations.</p> <p>24 Q. In your opinion, do your attorneys have 25 the time and resources to obtain and review the</p>

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1 discovery in the manner each case requires?</p> <p>2 A. No.</p> <p>3 Q. And what is the reason they don't have</p> <p>4 the time?</p> <p>5 A. The number of cases that they're</p> <p>6 handling, and in addition so many of the cases now</p> <p>7 have electronic discovery, such as jail phone calls</p> <p>8 or cell phone data, both of which are very</p> <p>9 time-consuming to go through.</p> <p>10 Q. Do your attorneys review camera footage</p> <p>11 from police cameras and police vehicles?</p> <p>12 A. If we receive it and if we do not</p> <p>13 receive it and believe it exists, we -- we have</p> <p>14 requested it.</p> <p>15 Q. Are officers in St. Louis city wearing</p> <p>16 personal body cameras?</p> <p>17 A. I don't think so. We're not getting</p> <p>18 any -- any data from them.</p> <p>19 Q. Okay.</p> <p>20 A. There may be a few who are</p> <p>21 experimenting with it.</p> <p>22 Q. At what point in a case would attorneys</p> <p>23 request the hiring of an expert? How long before</p> <p>24 trial?</p> <p>25 A. Generally once discovery is received</p>	<p style="text-align: right;">Page 63</p> <p>1 investigators?</p> <p>2 MR. MOORE: Also object to the form of</p> <p>3 the question. I think it's kind of vague. Subject</p> <p>4 to that, you can respond.</p> <p>5 A. I think some of the more experienced</p> <p>6 attorneys do, but we have a large number of</p> <p>7 inexperienced attorneys in the office, so the</p> <p>8 majority of the attorneys do not.</p> <p>9 Q. (By Mr. Maune) Do you believe you have</p> <p>10 the -- an adequate number of investigators to handle</p> <p>11 the cases that are staffed?</p> <p>12 A. No.</p> <p>13 Q. Do attorneys in your district regularly</p> <p>14 seek continuances?</p> <p>15 A. Yes.</p> <p>16 Q. And if so, what do you think is the</p> <p>17 reason?</p> <p>18 A. The general reasons are discovery is</p> <p>19 incomplete. Defense investigation is ongoing.</p> <p>20 Competence of defendant is being evaluated or the</p> <p>21 attorney's trial schedule is such that they do not</p> <p>22 have time to prepare the case for trial.</p> <p>23 Q. Are these continuances often granted by</p> <p>24 the courts?</p> <p>25 A. And I'm sorry, can I add one more?</p>
<p style="text-align: right;">Page 62</p> <p>1 and reviewed. So it takes a long time for a case to</p> <p>2 get to trial in the city of St. Louis. So it could</p> <p>3 be a year before trial. It could be six months</p> <p>4 before trial.</p> <p>5 Q. Do you have a sense how long before</p> <p>6 trial discovery is received from -- from the state?</p> <p>7 A. So it's supposed to be received within</p> <p>8 ten days of arraignment. Full discovery usually</p> <p>9 occurs throughout the course of the case.</p> <p>10 Q. Do you believe it's the case that your</p> <p>11 attorneys decide against using an expert because of</p> <p>12 the time required in working with that expert?</p> <p>13 A. I think there are not enough attorneys</p> <p>14 with experience to understand when an expert could</p> <p>15 have value to their case.</p> <p>16 Q. You previously testified that you have</p> <p>17 four investigators in your office; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that those investigators are</p> <p>20 assigned to cases, but only when requested by the</p> <p>21 attorneys; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Do you believe that based on your</p> <p>24 experience that your attorneys have the experience</p> <p>25 necessary to fully utilize the abilities of their</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Go ahead.</p> <p>2 A. The -- the case was recently</p> <p>3 transferred to the attorney and the attorney has not</p> <p>4 had time to meet the client. Yes, the continuances</p> <p>5 are regularly granted.</p> <p>6 Q. What is the impact of these</p> <p>7 continuances on your clients?</p> <p>8 A. Our clients are confined a very long</p> <p>9 period of time before they get their case to trial,</p> <p>10 and in a large number of the cases that we do take</p> <p>11 to trial we have success in which the person is</p> <p>12 either found not guilty or the case is dismissed,</p> <p>13 yet they've had to sit in jail for one to</p> <p>14 three years waiting to get their case to trial.</p> <p>15 Q. What is the impact on these</p> <p>16 continuances on the trust the clients have with your</p> <p>17 attorneys?</p> <p>18 A. It diminishes it. And it makes the --</p> <p>19 the attorney caseload more complex because if you're</p> <p>20 going to meet a client every 30 days and the case</p> <p>21 lasts for six months, that's six visits. If the</p> <p>22 case lasts for three years, that's 36 visits. With</p> <p>23 not much happening for most of them.</p> <p>24 And there are many cases that proceed</p> <p>25 to trial that by the time the case goes to trial</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 it's the second, third, sometimes fourth attorney 2 assigned to the case.</p> <p>3 Q. Talk about traveling. How much time do 4 your attorneys spend in traveling for conflict cases 5 currently?</p> <p>6 A. So currently we have three attorneys 7 who handle conflict cases. One of them handles 8 Jefferson County and St. Francois County. So that 9 person spends a significant amount of time traveling 10 to those jurisdictions.</p> <p>11 One of the persons handles Franklin 12 County, and again, that's about a 40 to -- minute to 13 an hour drive each way. The third person handles 14 St. Louis County and St. Charles County. So that 15 person travels, but not as frequently because those 16 jurisdictions are closer.</p> <p>17 Q. How long does the person who's handling 18 the Jefferson, St. Francois County on average, how 19 long is their travel time?</p> <p>20 A. From the city to Jefferson County is 21 about an hour. From the city to St. Francois County 22 is about an hour and a half.</p> <p>23 Q. And have all new cases that -- new 24 conflict cases been assigned to contract attorneys 25 since July 1st of 2017?</p>	<p style="text-align: right;">Page 67</p> <p>1 investigate or draft such a motion?</p> <p>2 A. There probably are, yes. I'd have to 3 know the specifics of the case to know what motions.</p> <p>4 Q. Regarding such motions, aside from 5 suppression motions do you believe there are motions 6 that your attorneys -- motions that may be warranted 7 by the case, but your attorneys did not have the 8 experience to realize that such motions may be 9 warranted?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have a sense for how often in 12 area 22 your attorneys take noncapital homicide 13 cases to trial on an annual basis?</p> <p>14 A. We probably try ten to 15 homicides a 15 year.</p> <p>16 Q. And for A/B felonies, not including 17 homicide?</p> <p>18 A. Well, we try 90 -- 90 to a hundred 19 cases per year, and I would say 50 percent of those 20 are homicides or serious felonies and 50 percent are 21 what we would label gun or drug case or misdemeanor. 22 And other jury trials.</p> <p>23 Q. And out of those 90 to a hundred cases, 24 do you have an estimate how many are juvenile cases?</p> <p>25 A. So juvenile cases don't get a jury</p>
<p style="text-align: right;">Page 66</p> <p>1 A. With the exception of those where we 2 already represent the defendant in another case.</p> <p>3 Q. Okay. How often do your attorneys file 4 suppression motions?</p> <p>5 A. Generally in any case that is going to 6 trial. And in a small percentage of the cases that 7 do not go to trial.</p> <p>8 Q. Are there times that you believe a 9 suppression motion may be warranted, but your 10 attorneys did not have time to investigate or draft 11 such a motion?</p> <p>12 A. There are times when I believe it is 13 warranted, but the attorney did not have the 14 experience to realize it was warranted and did not 15 seek out assistance.</p> <p>16 Q. How often do your attorneys file other 17 types of pretrial motions?</p> <p>18 A. We file discovery motions to compel on 19 a pretty consistent basis. And we file motions to 20 review conditions of bond on a consistent basis. 21 Other motions are as the attorney deems necessary.</p> <p>22 Q. Other than we just discussed 23 suppression motions, are there motions that you 24 believe -- pretrial motions that you believe your 25 attorney should be filing but did not have time to</p>	<p style="text-align: right;">Page 68</p> <p>1 trial.</p> <p>2 Q. Don't get a jury trial.</p> <p>3 A. Many of them, however, are 4 17-year-olds, which in most of the country are 5 juveniles, but in Missouri they're automatically 6 transferred to adult court.</p> <p>7 Q. How many juvenile cases per year do 8 your attorneys assist in?</p> <p>9 A. I believe about 300 was the fiscal year 10 2017. It has decreased this year significantly.</p> <p>11 Q. Do you have an understanding of why 12 that number has decreased?</p> <p>13 A. Juvenile court has stopped issuing as 14 many cases, so we litigated pretty heavily in fiscal 15 year 2017 and many cases resulted in a finding of no 16 guilt or dismissal, so I think they've reevaluated 17 what they issue.</p> <p>18 Q. Is that the prosecutor's discretion to 19 bring less cases or is that the court's discretion 20 to --</p> <p>21 A. In juvenile court?</p> <p>22 Q. In juvenile court.</p> <p>23 A. It is -- it is the juvenile officer's 24 discretion. So the juvenile officer is represented 25 by legal counsel who is not the prosecutor for the</p>

17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 City of St. Louis.</p> <p>2 Q. In your opinion, do your attorneys have</p> <p>3 the time and resources to adequately prepare for</p> <p>4 trial?</p> <p>5 A. They do if that was all they were</p> <p>6 doing.</p> <p>7 Q. What are the other -- what are the</p> <p>8 other things your attorneys are doing, is it</p> <p>9 preparing for other cases that are not going to</p> <p>10 trial?</p> <p>11 A. Right. So we have attorneys who on a</p> <p>12 pretty consistent basis have a trial set every week</p> <p>13 for a period of five or six weeks. So if they're</p> <p>14 spending the time they need to prepare those cases</p> <p>15 for trial, they're not paying attention to any of</p> <p>16 their other clients.</p> <p>17 And when they should be preparing for</p> <p>18 next week's trial they're in trial this week. So if</p> <p>19 you just took the number of cases we took to trial</p> <p>20 and gave us responsibility for those, we would have</p> <p>21 plenty of time and resources.</p> <p>22 Q. If -- how often do you have</p> <p>23 second-chair attorneys participate in trial?</p> <p>24 A. Our policy is first misdemeanor jury</p> <p>25 trial, first two felony jury trials, first sex</p>	<p style="text-align: right;">Page 71</p> <p>1 and then the attorney would have a second meeting</p> <p>2 with the client after they've received discovery.</p> <p>3 So that would be the minimal time before a case</p> <p>4 would be resolved with a plea.</p> <p>5 Q. And do you have any local procedures</p> <p>6 for counseling your attorneys prior to accepting --</p> <p>7 to discussing the case with you or a more serious --</p> <p>8 experienced attorney in the office before counseling</p> <p>9 that client on accepting a guilty plea?</p> <p>10 A. So the newest attorneys meet with the</p> <p>11 deputy district defender, and one of the purposes is</p> <p>12 to discuss their cases that are coming to resolution</p> <p>13 and get advice on whether or not it's a good</p> <p>14 resolution.</p> <p>15 Q. How are plea offers communicated with</p> <p>16 your clients?</p> <p>17 A. So in our jurisdiction there aren't</p> <p>18 very many plea offers. Most pleas are open pleas</p> <p>19 where the range of punishment is available to the</p> <p>20 court and based upon evidence presented by the state</p> <p>21 and the defense the court makes a decision. If we</p> <p>22 receive a plea offer, then they're usually</p> <p>23 communicated in person. Sometimes through letters.</p> <p>24 Q. In your opinion, do your attorneys have</p> <p>25 the time and resources to adequately negotiate plea</p>
<p style="text-align: right;">Page 70</p> <p>1 offense jury trial, and first homicide jury trial.</p> <p>2 We have not been able to meet that requirement</p> <p>3 consistently this year because we haven't had enough</p> <p>4 attorneys who have had trial experience to do those</p> <p>5 second chairs.</p> <p>6 Q. How does your office prioritize having</p> <p>7 second trial, is it by the seriousness of the</p> <p>8 charges?</p> <p>9 A. You mean how do we prioritize who gets</p> <p>10 the second chair?</p> <p>11 Q. Correct.</p> <p>12 A. No. It's generally the place that we</p> <p>13 are lacking is in the more serious cases. So to get</p> <p>14 an attorney to second chair a homicide case makes</p> <p>15 sense that you've tried a homicide case, and we</p> <p>16 don't have enough attorneys who have done that. So</p> <p>17 sometimes the second chair has been a person who</p> <p>18 themselves has never tried a homicide case. And the</p> <p>19 same -- same issue with sex offenses.</p> <p>20 Q. How much time do your attorneys spend</p> <p>21 working up a case before the attorneys advise a</p> <p>22 client of whether or not to take a guilty plea?</p> <p>23 A. So the attorney should have had an</p> <p>24 initial meeting with the client, and that would</p> <p>25 usually be before the attorney had any discovery,</p>	<p style="text-align: right;">Page 72</p> <p>1 deals and counsel their clients on whether or not to</p> <p>2 accept a plea?</p> <p>3 A. No. In large part because negotiation</p> <p>4 has not occurred. So there's literally no one in</p> <p>5 the office who has experience negotiating plea deals</p> <p>6 because they've all been open pleas.</p> <p>7 Q. Is that -- has that been consistent</p> <p>8 since you started as the district defender in 2007?</p> <p>9 A. Yes. Yeah. There is a new circuit</p> <p>10 attorney as of this year, and she has informed the</p> <p>11 court that she intends to move towards pursuing</p> <p>12 negotiated pleas, but it hasn't happened in her</p> <p>13 first year in office. But as a result, those</p> <p>14 attorneys have to prepare a lot more cases for trial</p> <p>15 in order to be able to determine what's a reasonable</p> <p>16 resolution.</p> <p>17 Q. Do your attorneys request psychiatric</p> <p>18 evaluations for your clients?</p> <p>19 A. Yes.</p> <p>20 Q. Are these private evaluations?</p> <p>21 A. Sometimes.</p> <p>22 Q. Do your attorneys attend lineups?</p> <p>23 A. If it is a person that we are already</p> <p>24 representing and we are informed of it, yes. And if</p> <p>25 it's in juvenile court, we do.</p>

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 Q. Are the lineup's videotaped?</p> <p>2 A. No.</p> <p>3 Q. Are they live or are they picture?</p> <p>4 A. They're live. Usually.</p> <p>5 Q. Do your clients ever participate in</p> <p>6 interviews for presentence investigation reports?</p> <p>7 A. Very rarely.</p> <p>8 Q. And do attorneys in your office</p> <p>9 represent clients for such interviews?</p> <p>10 A. I think there's been maybe one or two</p> <p>11 occasions in the ten years I've been there where an</p> <p>12 attorney participated.</p> <p>13 Q. Are there attorneys notified of these</p> <p>14 proceedings?</p> <p>15 A. They're notified that an investigation</p> <p>16 is going to happen, but not when it is going to</p> <p>17 happen. So the burden is on the attorney to find</p> <p>18 out when it's going to happen and to let the</p> <p>19 investigator know they'd like to be present.</p> <p>20 Q. If one of your clients decides to</p> <p>21 withdraw a plea in the rare cases that pleas are</p> <p>22 available, what steps do your attorneys take?</p> <p>23 A. To withdraw a plea?</p> <p>24 Q. Yes.</p> <p>25 A. You'd have to demonstrate some manifest</p>	<p style="text-align: right;">Page 75</p> <p>1 income to make that determination?</p> <p>2 A. In juvenile court in St. Louis city the</p> <p>3 court's position is that every child is indigent.</p> <p>4 Q. Have your attorneys expressed any</p> <p>5 concerns with representing clients in juvenile</p> <p>6 court?</p> <p>7 A. Can you be more specific?</p> <p>8 Q. Have your attorneys expressed any</p> <p>9 concerns with their experience or training with</p> <p>10 representing juveniles in juvenile court?</p> <p>11 A. No, because we've had a juvenile</p> <p>12 specialist, and the attorneys who are now being</p> <p>13 trained are being mentored through the process.</p> <p>14 Q. How do your attorneys in your office</p> <p>15 prepare for detention hearings?</p> <p>16 A. Meet the child. We obtain the</p> <p>17 petition, the probable cause statement, what's</p> <p>18 called the juvenile summary, and the juvenile</p> <p>19 detention alternatives score sheet, and make contact</p> <p>20 with family if able to.</p> <p>21 Q. What resources are available to your</p> <p>22 attorneys to identify alternatives to detention for</p> <p>23 juvenile clients?</p> <p>24 A. I'm not sure what you mean. We</p> <p>25 generally advocate for release from detention and</p>
<p style="text-align: right;">Page 74</p> <p>1 injustice. So you would have to file a motion to</p> <p>2 accomplish it.</p> <p>3 Q. Would an indigent defendant represented</p> <p>4 by your office ever withdraw a plea without legal</p> <p>5 representation?</p> <p>6 A. Not that I know of.</p> <p>7 Q. Have your attorneys for area 22 ever</p> <p>8 waived or skipped voir dire during trial?</p> <p>9 A. No.</p> <p>10 Q. Who will notify a defendant of his or</p> <p>11 her right to an appeal after trial?</p> <p>12 A. The trial counsel.</p> <p>13 Q. We've covered a lot of these, so I'm</p> <p>14 just going through. How are indigency</p> <p>15 determinations made for juveniles?</p> <p>16 A. In juvenile court, the court makes a</p> <p>17 determination that the child needs counsel and</p> <p>18 notifies us. We go ahead and enter an appearance</p> <p>19 and then the attorney will look to see if there is a</p> <p>20 concern that the child is not indigent, but in the</p> <p>21 last three years I can't think of any case that we</p> <p>22 asked to get off of because the child was not</p> <p>23 indigent. In ten years there's been maybe four or</p> <p>24 five.</p> <p>25 Q. Do you know if they use the parents'</p>	<p style="text-align: right;">Page 76</p> <p>1 that release would either be to parents' home or to</p> <p>2 another relative's home. So that would be the</p> <p>3 investigation that we do.</p> <p>4 Q. How do your attorneys in your office</p> <p>5 prepare to advocate for informal adjustment?</p> <p>6 A. We do not handle informal adjustments.</p> <p>7 Q. And why is that?</p> <p>8 A. They're not eligible under the Chapter</p> <p>9 600.</p> <p>10 Q. Okay. Are attorneys from your office</p> <p>11 present at all diversion conferences for juvenile</p> <p>12 clients?</p> <p>13 A. What do you mean by diversion</p> <p>14 conferences?</p> <p>15 Q. Are there -- are there conferences in</p> <p>16 St. Louis city for diversion from -- diversion</p> <p>17 programs for juvenile clients?</p> <p>18 A. So there was a drug court in juvenile</p> <p>19 court, so we would have been -- we would have been</p> <p>20 present at that, had been part of the conversation,</p> <p>21 disposition of the child's case.</p> <p>22 Q. But there's no longer a drug court in</p> <p>23 St. Louis; is that correct?</p> <p>24 A. At the end of the year it's ending.</p> <p>25 Q. Do you know why it's ending?</p>

19 (Pages 73 to 76)

1 A. It was a terrible program. No child
2 succeeded and it was a program that was created for
3 adults and didn't work with children who were
4 smoking marijuana.

5 MR. MAUNE: Talk a little bit about the
6 Missouri Coalition for the Right to Counsel.
7 (Exhibit 6, Previously marked exhibit.)

8 **Q. (By Mr. Maune) Handing you a document**
9 **that's been previously marked Petsch Document Number**
10 **6. Have you seen this document before?**

11 A. I have.

12 **Q. And what is it?**

13 A. It's the notification of case
14 assignment to a volunteer attorney through the
15 Missouri Coalition for the Right to Counsel.

16 **Q. And can you tell me a little bit about**
17 **the Missouri Coalition for the Right to Counsel**
18 **program?**

19 A. So an attorney who was retiring from
20 Armstrong Teasdale I think spoke to the director of
21 the public defender system about providing
22 assistance to the public defender system by
23 involving private attorneys from large civil firms
24 to give the public defender the benefit of
25 additional counsel and to give the firms the benefit

1 will go towards jury trial, but they've ranged from
2 low level felonies up to homicide cases that we have
3 assigned out.

4 **Q. What type of training is done for the**
5 **pro bono counsel that are handling these cases?**

6 A. They're -- the public defender system
7 put on a two-day training for the initial group in
8 January -- I mean -- I'm sorry, in April of 2017 in
9 St. Louis.

10 Then there was another training in
11 October 2017 in Kansas City as well as a half-day
12 training here in St. Louis at the same time. And
13 then there's another training coming up in January.
14 And the training involves the skills necessary to
15 handle a jury trial.

16 **Q. Do you anticipate having to -- strike**
17 **that.**

18 **Who from your office conducts the**
19 **training?**

20 A. I have participated in the training.
21 Rick Kroger, who was the deputy district defender,
22 participated. Megan Beesley and Erika Wurst and
23 Matthew Mahaffey, who are all assistant public
24 defenders in our office, have been involved in the
25 training.

1 of getting their associates trial experience. And
2 the Missouri Coalition was formed and we have
3 participated in it since it has been formed.

4 **Q. Do you know how long ago it was formed?**

5 A. The initial training session was in
6 April 2017. So it was formed right about that time.
7 There were meetings about it prior to then, but I
8 think it had to be chartered or --

9 **Q. Do you know how many firms participate**
10 **in the Missouri Coalition for the Right to Counsel?**

11 A. I do not have the number of firms, no.
12 I think we have about 60 to a hundred attorneys
13 maybe signed up.

14 **Q. Do you know how many cases are referred**
15 **to pro bono attorneys as part of the Missouri**
16 **Coalition for the Right to Counsel?**

17 A. So from our office we have referred
18 36 cases.

19 **Q. And those 36 cases are all since April**
20 **of 2017?**

21 A. Correct.

22 **Q. Are there particular types of cases**
23 **that are assigned to the Missouri Coalition for the**
24 **Right to Counsel?**

25 A. We try to find cases that we believe

1 **Q. Do you anticipate continuing this**
2 **initial training on an annual basis for private**
3 **counsel?**

4 A. I don't know if the ones who have
5 already been trained will come back, but I know that
6 there's training for new attorneys in January.

7 **Q. Right. And aside from St. Louis and**
8 **Kansas City, are any other districts looking to**
9 **implement a similar program?**

10 A. So St. Louis County also participated
11 in the one --

12 **Q. Okay.**

13 A. -- that St. Louis City was involved in,
14 and then some of the attorneys, the volunteer
15 attorneys took appellate cases. So some of the
16 appellate offices have sent cases to them.

17 **Q. How -- what has been the impact of the**
18 **MCRC program on attorney caseload for your office?**

19 A. It hasn't had a significant one since
20 we've only sent out 36 cases. The benefit that we
21 have seen, though, is that most of those 36 cases
22 were cases from an attorney who was leaving the
23 office, so that keeps an attorney in the office from
24 inheriting a stale case and having to prepare it in
25 a shorter period of time.

<p style="text-align: right;">Page 81</p> <p>1 Q. Have any of the 36 cases that have been 2 assigned to pro bono counsel gone to trial? 3 A. Yes. 4 Q. Do you have an idea how many? 5 A. Two. Two went to trial to a jury 6 verdict. Three went to trial and were dismissed at 7 the time they were sent out to trial. 8 Q. Are the rest of the cases still 9 pending? 10 A. No. There are I believe eight or 11 nine cases that either plead or are now 12 participating in diversion court. 13 Q. How are resources -- I'll be more 14 specific. 15 How are experts compensated for these 16 types of cases, do those expert -- those requests 17 for funding for experts still go to the public 18 defenders office? 19 A. I believe they can make that request, 20 but I think there was also a hope that the private 21 firm would take care of that expense when possible. 22 Q. Do you know if that's occurred to this 23 point? 24 A. I know the private firms have paid for 25 their own depositions through the assistance of</p>	<p style="text-align: right;">Page 83</p> <p>1 tell me what happened. 2 Q. Do you anticipate the number of cases 3 being assigned to pro bono counsel in area 22 to 4 change over the next several years? 5 A. I would like to see it increase. 6 Q. Talk a little bit about training and 7 development of your new attorneys. You said you 8 have several new attorneys in your office. What 9 type of training do those attorneys first receive 10 when they're hired on? 11 A. So we've hired 15 attorneys in this 12 last year. So 15 of our 30 attorneys have been 13 there one year or less. And when they initially 14 join the office they are placed on what we call the 15 green team because they are the green attorneys, and 16 once a week they meet with the deputy district 17 defender. 18 The previous deputy district defender 19 was a more informal discussion about cases. The 20 current deputy district defender is trying to create 21 a curriculum so that as attorneys cycle through the 22 office we'll have the curriculum prepared and 23 they'll have access to it. 24 Q. So these 15 new attorneys that you've 25 hired in the last year, are they all new attorneys</p>
<p style="text-align: right;">Page 82</p> <p>1 Midwest Litigation. I know they have -- they have 2 hired their own investigators in some cases. At 3 times they've asked us to assist them in serving 4 subpoenas or finding witnesses. 5 And I don't know that anyone has hired 6 an expert witness, although I take that back. I 7 think we had a case recently where a mental health 8 expert was retained by one of the firms to present 9 mitigation evidence, and I believe the firm paid for 10 that. 11 Q. How about for the use of social 12 workers, do such firms have access to that type of 13 experience? 14 A. In the case that I'm thinking of where 15 they wanted to present mitigation evidence they 16 spoke with our social worker, and then I think the 17 social worker put them in connection with services 18 in the community. 19 Q. Okay. And do you monitor the 20 disposition of those cases after they're assigned to 21 the pro bono counsel? 22 A. At the conclusion of the case they are 23 supposed to send a document back to the contracting 24 office in Columbia who monitors that. But the ones 25 that are in the city of St. Louis, they generally</p>	<p style="text-align: right;">Page 84</p> <p>1 right out of law school? 2 A. No. So one of them is a transfer from 3 another office. One is a former prosecutor. One is 4 a former public defender. One worked at Lewis Rice. 5 One had worked in Missouri government, but not 6 really as an attorney. I think more as a policy 7 person. 8 And the rest would be right out of law 9 school. Some of them did a clerkship for a judge 10 before they came to us, so they may have gone from 11 law school to clerkship to our office. I think that 12 was two of them. 13 Q. And does the Missouri State Public 14 Defenders Office offer training for new attorneys -- 15 A. Yes. 16 Q. -- that they go to? 17 A. Yes. 18 Q. How often does the Missouri State 19 Public Defenders Office offer that new training for 20 their attorneys? 21 A. So once a year there's training called 22 new defender training, and once a year there is a 23 trial skills training. There's also a new employee 24 orientation. 25 And then once a year there's a system</p>

21 (Pages 81 to 84)

<p style="text-align: right;">Page 85</p> <p>1 wide training that the new attorneys would also 2 attend. So in their first year they could attend 3 four trainings. But if you get hired immediately 4 after one of those trainings, you have to wait a 5 year to take it.</p> <p>6 Q. If -- if a attorney is hired right 7 after the Missouri State Public Defenders Office has 8 hired new -- or has handled new attorney training, 9 how does that impact your assignment of cases for 10 that attorney over the year till they can get that 11 training?</p> <p>12 A. It doesn't. They -- they generally get 13 new cases their first day on the job. Or they get 14 cases that already exist and the previous attorney 15 left are transferred to them their first day on the 16 job.</p> <p>17 Q. What are your policies and procedures 18 for -- for supervising these new attorneys that have 19 started in your office?</p> <p>20 A. I don't know that we have any formal 21 policies. I mean, other than if they take a case to 22 a jury trial they need a second chair for their 23 first misdemeanor and first two felony trials, first 24 sex and homicide. But hopefully that wouldn't 25 happen in their first year. And they're evaluated</p>	<p style="text-align: right;">Page 87</p> <p>1 of the in re Hinkebein decision?</p> <p>2 A. We had individual meetings with every 3 attorney to evaluate their caseloads and to find out 4 from them whether or not they felt their caseload 5 was too high, and if they did, then we added 6 additional information to the case assignment sheet 7 to stop them from receiving any new assignments 8 until that changed.</p> <p>9 Q. In your experience, what has been the 10 response from the courts in -- in your district with 11 respect to this decision?</p> <p>12 A. I've spoken to the presiding judge who 13 is very empathetic with our position and who wants 14 to make certain that our caseloads remain 15 reasonable. I've spoken to the -- what we call the 16 criminal assignment judge who manages the criminal 17 docket. He's been less empathetic, but is willing 18 to talk if we get to the point where we have to put 19 people on wait list.</p> <p>20 Q. Do you currently have a wait list?</p> <p>21 A. No.</p> <p>22 Q. Have you ever had a wait list in your 23 previous ten years?</p> <p>24 A. Back in 2012 we had a wait list, I 25 believe.</p>
<p style="text-align: right;">Page 86</p> <p>1 at the end of that first year.</p> <p>2 Q. Do you have any mechanisms for 3 attorneys to raise concerns about their caseloads?</p> <p>4 A. Yes.</p> <p>5 Q. And can you please describe those 6 mechanisms or policies or procedures that you have?</p> <p>7 A. We've met with all of the attorneys in 8 the office and discussed their ethical obligations 9 and informed them of their duty to bring their 10 attention -- to bring to our attention if they 11 believe their caseload is too high. And I also 12 monitor their caseloads on a regular basis to see if 13 I believe there is concerns with it being too high.</p> <p>14 Q. Can attorneys refuse cases because they 15 believe their caseload is too high?</p> <p>16 A. They could. They have not had to 17 because any attorney who has requested that they not 18 receive new cases, that request has been honored.</p> <p>19 Q. And what happens to the case if it was 20 refused by an attorney because their current 21 caseload is too high?</p> <p>22 A. It goes to another attorney within the 23 office at this point.</p> <p>24 Q. What have -- have there been any 25 changes in policy that you've implemented in light</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. And in 2012 who decided what clients 2 would go on a wait list?</p> <p>3 A. I did based upon an administrative 4 order that was issued by the court.</p> <p>5 Q. How did clients get off the wait list 6 for representation?</p> <p>7 A. I don't remember the specifics of how 8 it worked, but my recollection is that the wait list 9 ended when the public defender system decided to not 10 use the certification protocol. And I believe -- 11 and I would have to double-check this, but I 12 believed we used that indigence docket also as a way 13 for cases to come off the wait list.</p> <p>14 Q. Have there been any changes in the 15 number of attorneys in your office that helped 16 alleviate the need for a wait list?</p> <p>17 A. We actually took on a heavier caseload 18 during the last several years so that we could free 19 up a position for another office. So in -- when I 20 began in 2007 we handled first-level conflicts for 21 St. Francois County, Jefferson County, and St. Louis 22 County, and second-level conflicts for Franklin 23 County and St. Charles County.</p> <p>24 We took on first-level conflicts for 25 Franklin County and St. Charles County, which is</p>

22 (Pages 85 to 88)

<p style="text-align: right;">Page 89</p> <p>1 basically a position. And St. Louis County lost 2 that responsibility. So we didn't change the number 3 of attorneys, but we changed the responsibilities, 4 and I think that happened in 2011 or '12. I think 5 maybe that happened in 2013.</p> <p>6 Q. Have you drafted or I guess sent any 7 memoranda to the courts concerning the in re 8 Hinkebein decision?</p> <p>9 A. No.</p> <p>10 Q. Has there been a reaction to the best 11 of your knowledge from the local bar association in 12 your district regarding this decision?</p> <p>13 A. No.</p> <p>14 MR. MAUNE: It's a good place for a 15 break.</p> <p>16 VIDEOGRAPHER: The time is 11:06. We 17 are off the record.</p> <p>18 (WHEREIN, a recess was taken.)</p> <p>19 VIDEOGRAPHER: The time is 11:15. We 20 are back on the record.</p> <p>21 (Exhibit 5, Previously marked exhibit.)</p> <p>22 Q. (By Mr. Maune) I've handed you what's 23 been previously marked as Exhibit Number 5 24 Cardarella. Can you please take a few minutes to 25 review this document, let me know when you're ready</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. And was that due to 15 openings that 2 happened in your office previous to them starting?</p> <p>3 A. Yes.</p> <p>4 Q. Is that number of openings in a single 5 year unusual for area 22?</p> <p>6 A. It's higher than it has been I believe 7 in ten years, but it's generally between eight and 8 12 a year.</p> <p>9 Q. What do you believe is the cause for 10 this turnover rate?</p> <p>11 A. The high workload, the high trial 12 calendar -- or difficult trial calendar in the city 13 of St. Louis. And the low pay.</p> <p>14 Q. Can you expand on what you mean by a 15 difficult trial calendar in the city of St. Louis?</p> <p>16 A. So our office tries more cases to a 17 jury trial than any other office in the state, and 18 that's consistent with our circuit. Our circuit 19 does that more than any other circuit in the state.</p> <p>20 And because there are no plea 21 negotiations, many more cases are prepared for trial 22 and then resolved at the time the case is sent to 23 trial or dismissed by the state at the time that a 24 case is sent to trial.</p> <p>25 So in addition to the -- about a</p>
<p style="text-align: right;">Page 90</p> <p>1 to proceed.</p> <p>2 A. Okay.</p> <p>3 Q. Have you seen this document before?</p> <p>4 A. I have -- I believe it's in our 5 litigation, but I'm not positive but I've looked at 6 it. It's in our litigation board.</p> <p>7 Q. Do you know what it -- what it is?</p> <p>8 A. It is a proposed writ for an attorney 9 who wants to be able to withdraw from a case and the 10 court will not allow them to.</p> <p>11 Q. Have any attorneys in area 22 utilized 12 this sample writ?</p> <p>13 A. No.</p> <p>14 Q. Is this example available for your 15 attorneys to use if required?</p> <p>16 A. I believe it's on the litigation board. 17 They -- they know the litigation board exists. I 18 think if we got to the point where one of them 19 wanted to withdraw, it would be going through me as 20 opposed to them as an individual.</p> <p>21 Q. Let's talk about turnover in your 22 office for a minute. You said you have 15 new 23 attorneys start in your office as of this year; is 24 that correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 92</p> <p>1 hundred cases that are sent out to trial and go to 2 trial, there's an additional 60 a year, 50 to 60 a 3 year that are sent out to trial and the state 4 dismisses them after you've spent time preparing the 5 case for trial.</p> <p>6 And the way the trial docket is set up, 7 if you are suddenly available and have another case 8 on that trial docket, you could then immediately be 9 sent out on a second case. So we've had attorneys 10 sent out to trial on multiple cases within one week. 11 It's difficult to do that.</p> <p>12 Q. Do you have an idea of how -- the 13 highest number of cases a single attorney has had to 14 prepare for in say a given year?</p> <p>15 A. I can tell you the highest number of 16 cases that a single attorney has tried in a given 17 year is 18 felonies. But in addition to those 18, 18 that attorney would have prepared probably an 19 additional 20.</p> <p>20 Q. In your -- from your previous 21 experience as a public defender I believe in Clayton 22 County; is that correct?</p> <p>23 A. In St. Louis County and St. Louis City.</p> <p>24 Q. During that time, were there plea 25 arrangements in St. Louis County or St. Louis City?</p>

23 (Pages 89 to 92)

<p style="text-align: right;">Page 93</p> <p>1 A. In St. Louis County there have always</p> <p>2 been plea negotiations. In St. Louis City plea</p> <p>3 negotiations ended when Jennifer Joyce became the</p> <p>4 circuit attorney, and I believe that was 2000.</p> <p>5 Shortly after she -- she took office.</p> <p>6 Q. And has the lack of plea</p> <p>7 arrangements --</p> <p>8 A. I'm sorry, can I correct that? I'm</p> <p>9 wrong.</p> <p>10 Q. Yes, go ahead.</p> <p>11 A. She took office in 2000, and pursuant</p> <p>12 pleas stopped happening after she took office</p> <p>13 because her recommendations were so high. I think</p> <p>14 she did not stop making recommendations until 2012</p> <p>15 or 2013. But even when there were recommendations,</p> <p>16 most pleas were -- were open.</p> <p>17 Q. So when you say her recommendations</p> <p>18 were so high, does that mean that the -- the</p> <p>19 penalties were very high for those crimes?</p> <p>20 A. Yes. And higher than the court thought</p> <p>21 was appropriate.</p> <p>22 Q. And what has been the impact on your</p> <p>23 office from St. Louis City stopping plea</p> <p>24 negotiations on your attorneys' workload?</p> <p>25 A. It means that you -- it is much more</p>	<p style="text-align: right;">Page 95</p> <p>1 a not guilty verdict, but that's a lot of -- that's</p> <p>2 a very serious responsibility to give to an attorney</p> <p>3 with that little experience.</p> <p>4 So we generally have 60 plus homicides</p> <p>5 pending at any one time. And currently in the</p> <p>6 office we have five attorneys who have tried a</p> <p>7 homicide. Six, I'm sorry. Six.</p> <p>8 Q. Do you -- do you know where the</p> <p>9 attorneys who are leaving your office, do they go</p> <p>10 into private practice?</p> <p>11 A. Some go into private criminal practice.</p> <p>12 Several have gone to civil firms. Some have</p> <p>13 transferred to other public defender offices and</p> <p>14 some have left the practice of law.</p> <p>15 Q. And when someone -- when an attorney</p> <p>16 leaves your -- your office, is their position filled</p> <p>17 right away?</p> <p>18 A. We have to go through the hiring</p> <p>19 process, so it takes probably minimal three months</p> <p>20 to get filled.</p> <p>21 Q. How does your office advertise its open</p> <p>22 attorney positions?</p> <p>23 A. That's done through the HR office in</p> <p>24 Columbia. I think they use some of those computer</p> <p>25 websites, but I don't know which ones specifically.</p>
<p style="text-align: right;">Page 94</p> <p>1 difficult first of all to gain your client's trust,</p> <p>2 that they can plead open in front of a judge they</p> <p>3 have never met and their case has never been in</p> <p>4 front of before and that you can accurately predict</p> <p>5 what that judge will do with their case.</p> <p>6 So when they're entering a plea of</p> <p>7 guilty they have to state that they know the court</p> <p>8 has the full range of punishment in front of them,</p> <p>9 and the attorney has to be able to counsel them on</p> <p>10 what they believe the result will be.</p> <p>11 And generally we're right, but</p> <p>12 obviously it requires a lot of trust for someone to</p> <p>13 believe that you're right in that situation and to</p> <p>14 decide that a plea is in their best interest.</p> <p>15 Q. What are the kind of problems for your</p> <p>16 office are caused by such a high turnover rate?</p> <p>17 A. We don't have enough experienced</p> <p>18 attorneys to try the serious cases. So I have --</p> <p>19 some of those 15 attorneys that were hired this year</p> <p>20 already have homicide cases assigned to them. I --</p> <p>21 this year we had two attorneys we labeled APD2, so</p> <p>22 that means they had been with the system for more</p> <p>23 than one year, less than three years, who both tried</p> <p>24 murder first cases this year.</p> <p>25 Now, fortunately both of them obtained</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Has -- has area 22 ever lost positions</p> <p>2 because they have not been timely filled?</p> <p>3 A. No.</p> <p>4 Q. Is that a possibility if a position is</p> <p>5 not filled in a sufficient number of months that the</p> <p>6 position would be moved to another office?</p> <p>7 MR. MOORE: I'll just -- sorry. I'll</p> <p>8 just object, it calls for speculation, but you can</p> <p>9 go ahead.</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. (By Mr. Maune) Since you've been the</p> <p>12 district defender, are you aware of any cases in</p> <p>13 which one of -- a court has found that one of</p> <p>14 indigent defendants have received insufficient --</p> <p>15 MR. MOORE: Ineffective.</p> <p>16 Q. (By Mr. Maune) -- ineffective</p> <p>17 assistance of counsel?</p> <p>18 A. Yes.</p> <p>19 Q. And how often has that occurred?</p> <p>20 A. There have been two cases that have</p> <p>21 come out of my office to -- to my knowledge. One</p> <p>22 was for lack of investigation and one was for</p> <p>23 conveying incorrect information.</p> <p>24 Q. After the in re Hinkebein decision,</p> <p>25 have your attorneys expressed concern regarding this</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 decision?</p> <p>2 A. They've discussed it, yes. They're</p> <p>3 concerned. They were concerned for Mr. Hinkebein.</p> <p>4 They were concerned for what it means for</p> <p>5 themselves.</p> <p>6 Q. Is there anything else you think we</p> <p>7 should know regarding your office's ability --</p> <p>8 strike that.</p> <p>9 A. Excuse me.</p> <p>10 Q. Do you believe you have a sufficient</p> <p>11 number of investigators?</p> <p>12 A. No.</p> <p>13 Q. Do you have an idea how -- what the</p> <p>14 ratio of attorney to investigator should be?</p> <p>15 A. No, but I can tell you that trying a</p> <p>16 hundred plus cases a year, we never have an</p> <p>17 investigator at the trial. The investigators are</p> <p>18 continually interviewing and investigating future</p> <p>19 cases and/or serving subpoenas. So when an attorney</p> <p>20 goes to trial, they do not have an investigator with</p> <p>21 them.</p> <p>22 Q. So -- so how do the investigators</p> <p>23 receive feedback from the trial as to the</p> <p>24 effectiveness of their investigation or --</p> <p>25 A. Hope the attorney has enough time to</p>	<p style="text-align: right;">Page 99</p> <p>1 are they assigned to --</p> <p>2 A. They're assigned to --</p> <p>3 (Court reporter interruption.)</p> <p>4 A. -- attorneys.</p> <p>5 Q. (By Mr. Maune) And do you know what --</p> <p>6 is there -- what the current ratio, I guess, if it's</p> <p>7 five administrative staff; is that correct?</p> <p>8 A. Well, no. It's one, two, three,</p> <p>9 four -- there's four who are assigned just to</p> <p>10 attorneys. There are others who have other</p> <p>11 responsibilities and/or assigned to attorneys. So</p> <p>12 for instance, the legal assistant who have done our</p> <p>13 indigence applications is also the secretary for</p> <p>14 several attorneys.</p> <p>15 The legal assistant who manages our</p> <p>16 front office and handles all the incoming people and</p> <p>17 phone calls also is assigned to certain attorneys.</p> <p>18 The legal assistant who handles our juvenile docket</p> <p>19 also has certain attorneys. So there's only two</p> <p>20 support staff who do nothing but have attorneys.</p> <p>21 Q. So it's roughly -- roughly seven to</p> <p>22 one, seven attorneys for each assistant, but it's</p> <p>23 not directly correspondent because some are assigned</p> <p>24 solely for juvenile?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 98</p> <p>1 send a nice e-mail or to stop by and tell them.</p> <p>2 Q. How about administrative staff, do you</p> <p>3 have sufficient --</p> <p>4 A. Excuse me.</p> <p>5 Q. Do you have sufficient administrative</p> <p>6 staff?</p> <p>7 A. We are pretty well staffed</p> <p>8 administratively. And I say that, but -- but at the</p> <p>9 same time our attorneys still do a lot of their own</p> <p>10 work. So while our staff, our administrative staff</p> <p>11 do our initial pleadings, get our discovery, scan</p> <p>12 the discovery in, anything beyond that, any motion</p> <p>13 that's created beyond that the attorney is creating</p> <p>14 it themselves, filing it themselves, sending letters</p> <p>15 to their clients themselves.</p> <p>16 So it's not like any of us have a</p> <p>17 support staff person who is available to do all of</p> <p>18 those tasks. So if I'm sending letters to my</p> <p>19 clients I'm typing them, I'm creating an envelope,</p> <p>20 I'm placing them in the mail. So I think where I'm</p> <p>21 just so used to it I don't even realize that we</p> <p>22 don't have enough administrative staff.</p> <p>23 Q. Is there -- is it a -- for the</p> <p>24 administrators that you do have, is it more of a</p> <p>25 pool situation that you look for who is available or</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. MAUNE: Okay. I should be done. I</p> <p>2 just want to go off record for a minute and let's</p> <p>3 make sure I got everything cleaned up and then we'll</p> <p>4 be done.</p> <p>5 VIDEOGRAPHER: The time is 11:30. We</p> <p>6 are off the record.</p> <p>7 (WHEREIN, a recess was taken.)</p> <p>8 VIDEOGRAPHER: The time is 11:32. We</p> <p>9 are back on the record.</p> <p>10 MR. MAUNE: I'm handing you -- handing</p> <p>11 the court reporter a document that's entitled State</p> <p>12 of Missouri Public Defender Commission Fiscal Year</p> <p>13 2017 Annual Report. That will be marked as</p> <p>14 Plaintiffs' Exhibit Fox 33.</p> <p>15 (WHEREIN, Exhibit 33, State of Missouri</p> <p>16 Public Defender Commission Fiscal Year 2017 Annual</p> <p>17 Report, was marked for identification by the Court</p> <p>18 Reporter.)</p> <p>19 Q. (By Mr. Maune) Please take a look at</p> <p>20 it.</p> <p>21 A. I have seen it before.</p> <p>22 Q. You've seen it before?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. If you could turn to page 82 of</p> <p>25 the report.</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 A. Okay.</p> <p>2 Q. And I'm looking at the box in the</p> <p>3 center where it says St. Louis City cases assigned,</p> <p>4 and it starts with fiscal year '08 and it goes to</p> <p>5 fiscal year '17. And it looks like it starts with</p> <p>6 over 6,600 cases assigned in the beginning and then</p> <p>7 there's a pretty sharp I guess reduction in the</p> <p>8 number of cases starting in '13 continue --</p> <p>9 continuing through '14 and '15, and then beginning</p> <p>10 to rise again. Do you have an idea why the number</p> <p>11 of cases sharply went down and then maybe why</p> <p>12 they're coming up again?</p> <p>13 A. So fiscal year '12 was pre-Waters.</p> <p>14 When Waters came out our circuit had a meeting as</p> <p>15 Waters directed and the court issued an</p> <p>16 administrative order to assist with caseload relief.</p> <p>17 So fiscal year '13 reflects that change -- those</p> <p>18 changes in part. Part of fiscal year '13 was</p> <p>19 pre-Waters and part of fiscal year '13 was</p> <p>20 post-Waters.</p> <p>21 So fiscal year '14 and '15 pretty</p> <p>22 accurately reflect the reduction in caseload as a</p> <p>23 result of the administrative order, and then fiscal</p> <p>24 year '16 and '17, it's a combination of we took</p> <p>25 those additional conflict responsibilities and</p>	<p style="text-align: right;">Page 103</p> <p>1 THE WITNESS: Okay.</p> <p>2 Q. (By Mr. Maune) Have you seen this</p> <p>3 document before?</p> <p>4 A. Not in this form. I saw it when it was</p> <p>5 in the newspaper.</p> <p>6 Q. Okay. Were you interviewed for this</p> <p>7 article?</p> <p>8 A. I was.</p> <p>9 Q. And are your statements to the reporter</p> <p>10 accurately captured?</p> <p>11 A. They are. I'm sorry.</p> <p>12 Q. As we stand here today I guess a little</p> <p>13 over a month -- almost a month later, do your</p> <p>14 opinions remain the same that are portrayed in this</p> <p>15 article?</p> <p>16 A. Yes.</p> <p>17 Q. All right. Is there anything else that</p> <p>18 you think we should know regarding your office's</p> <p>19 ability or your attorneys' abilities to provide</p> <p>20 effective representation?</p> <p>21 A. Nothing that's coming to mind.</p> <p>22 MR. MAUNE: Pass the witness.</p> <p>23 EXAMINATION</p> <p>24 QUESTIONS BY MR. MOORE:</p> <p>25 Q. Very good. So my name is Justin Moore.</p>
<p style="text-align: right;">Page 102</p> <p>1 probation violations began to increase and more</p> <p>2 change in the judges who are handling the</p> <p>3 misdemeanor cases so that more misdemeanor</p> <p>4 defendants were coming up and applying for our</p> <p>5 services.</p> <p>6 In fiscal year '14 or '15 there was a</p> <p>7 misdemeanor judge who appointed private counsel on</p> <p>8 some of those misdemeanor cases that then in '16 and</p> <p>9 '17 came to us. So if you look at our case numbers,</p> <p>10 '14 and '15 pro revs and misdemeanors go down. '16</p> <p>11 and '17 they go up.</p> <p>12 MR. MAUNE: Okay. I'm handing to the</p> <p>13 court reporter a document that's an article in the</p> <p>14 St. Louis Post-Dispatch. It's entitled "Public</p> <p>15 defenders in Missouri say caseloads have them</p> <p>16 overworked and discipline has some scared." It will</p> <p>17 be marked as Fox 34.</p> <p>18 (WHEREIN, Exhibit 34, St. Louis</p> <p>19 Post-Dispatch article, was marked for identification</p> <p>20 by the Court Reporter.)</p> <p>21 MR. MOORE: Do you have another article</p> <p>22 by chance?</p> <p>23 MR. MAUNE: I will get you one.</p> <p>24 MS. SHIPMA: We can share.</p> <p>25 MR. MAUNE: Yeah.</p>	<p style="text-align: right;">Page 104</p> <p>1 And earlier I said I was for the Attorney General's</p> <p>2 Office. That's not exactly correct. Can you hear</p> <p>3 me okay?</p> <p>4 So earlier I said I was for the</p> <p>5 Attorney General's Office. That's not exactly</p> <p>6 correct. I'm from the Attorney General's Office,</p> <p>7 but I represent the State of Missouri and the</p> <p>8 Governor.</p> <p>9 So I'm just going to be following up on</p> <p>10 some of the questioning that's been taking place</p> <p>11 today. Let's just kind of go through and fill in a</p> <p>12 little bit of the background information. So if you</p> <p>13 could please just tell me about your educational</p> <p>14 background, where did you go to undergrad and then</p> <p>15 law school?</p> <p>16 A. Undergraduate, Saint Louis University.</p> <p>17 Graduated in 1976 with a degree in urban affairs.</p> <p>18 And law school, Saint Louis University School of</p> <p>19 Law, graduated in 1980.</p> <p>20 Q. Okay. Are you from the St. Louis area?</p> <p>21 A. I am.</p> <p>22 Q. Where did you go to high school at?</p> <p>23 A. Incarnate Word Academy.</p> <p>24 Q. Oh, very good. Private schooler. Very</p> <p>25 good. Okay. So let me see. And did you go</p>

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<p style="text-align: right;">Page 105</p> <p>1 straight through high school, undergraduate, law 2 school, or did you take some time off in there to 3 work? 4 (Court reporter interruption.) 5 Q. (By Mr. Moore) Did you go straight 6 through education or did you take any time off 7 in-between to work a job or anything of that nature? 8 A. I worked between college and law 9 school. 10 Q. And what did you do in-between? 11 A. Initially I had a job as a writer for a 12 public relations firm. And then I worked as an 13 administrative assistant for LIFE Skills Foundation, 14 which was a social service agency that served 15 developmentally disabled adults. 16 Q. Okay. And how long did you serve in 17 those roles? 18 A. So in the public relations firm I 19 believe I was only there maybe three or four months. 20 For LIFE Skills I worked there until I started law 21 school, and then I remained there through my 22 think -- I think through the second year in law 23 school, and then I took a legal job for the summer 24 after second year. 25 Q. Okay.</p>	<p style="text-align: right;">Page 107</p> <p>1 private firm, have you worked for any other private 2 firms in the St. Louis area or anywhere else? 3 A. No. 4 Q. Okay. So during this deposition you 5 kind of expressed some concerns, I guess, about 6 public defender workload and caseload, right? 7 A. Correct. 8 Q. Who all have you spoken to other than 9 the people we've already talked about about these 10 concerns? 11 A. Well, I speak to the attorneys in my 12 office on a pretty regular basis. I've spoken to 13 Mr. Patrick from the Post-Dispatch. I've spoken to 14 management within the public defender system. And 15 I've spoken to the judges within the circuit. 16 Q. So question for you is how do you 17 define a case or a matter in your system? 18 A. When the state initiates a proceeding 19 against a person. So if it's -- if it's one count 20 with three co-defendants, it would be three cases. 21 If it's one defendant with three charges, it would 22 be one case. 23 Q. Okay. So it's kind of like by 24 defendant for each matter? 25 A. Correct.</p>
<p style="text-align: right;">Page 106</p> <p>1 A. And then stopped third year. 2 Q. And so you know like what kind of 3 period of time you took off between undergraduate 4 and law school? 5 A. A year. 6 Q. Oh, it's one year. Okay. And you 7 worked at a -- I think you said a private firm of 8 some kind. I'm looking for the name of that firm 9 whenever you first got out of school; is that right? 10 A. Correct. 11 Q. What was the name of that firm again? 12 A. Kanefield & Mohme. 13 Q. Okay. And what kind of work did they 14 do? 15 A. Civil. 16 Q. Just like civil litigation or family 17 stuff or what kind of -- 18 A. It was a little small firm, did a 19 little bit of everything. I -- I can't remember to 20 tell you the truth what I did it was so many years 21 ago. 22 Q. Okay. How big was that firm? 23 A. There was Kanefield and Mohme and there 24 was me. 25 Q. Very good. So outside of that one</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. Is there a situation where one 2 case could become two different cases? 3 A. It does not generally happen that way. 4 Q. Okay. Can you think of a situation 5 where it would happen that way? 6 A. The court could sever and assign a new 7 case number to part of the case, but I've -- I've 8 never seen that happen in ten years. I think the 9 court has the authority to do that. 10 Q. How about for charges that are filed 11 subsequent to you guys already representing a 12 particular client, would that be a different case or 13 the same case? 14 A. If it's the same events it's the same 15 case. 16 Q. Okay. 17 A. If some new crime happens or new 18 charges occur that have nothing to do with the first 19 case, then that would be a separate case with 20 separate discovery. 21 Q. Okay. Have you noticed any recent 22 trends in how your district is defending cases, for 23 example, trending towards more depositions, more 24 experts, less plea deals, anything of that nature? 25 A. We have retained an eyewitness</p>

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<p style="text-align: right;">Page 109</p> <p>1 identification expert this year in several cases, 2 and I don't think we had ever retained an eyewitness 3 identification expert prior to this time. 4 The number of trials and number of 5 cases that get resolved by plea have remained 6 relatively consistent. There have been a larger 7 number of cases that have been sent out to trial in 8 which the state has dismissed the case this year. 9 Q. Any other trends that you've noticed? 10 A. Nothing I can think of off the top of 11 my head. 12 Q. Okay. So tell me about this eyewitness 13 ID expert, any particular reason why this person or 14 set of persons is being utilized more than in the 15 past? 16 A. Because of the change in the law in 17 terms of eyewitness identification. Missouri's case 18 law saying eyewitness identification experts are not 19 allowed in was made in 1988, and that law has 20 changed throughout the states since that time period 21 and as a result we are pursuing that issue. 22 And the Missouri Supreme Court issued 23 an eyewitness identification instruction which did 24 not previously exist. So the expert testimony is 25 consistent with the eyewitness identification</p>	<p style="text-align: right;">Page 111</p> <p>1 at Lotus, what all is included in there is just the 2 case disposition or is there other stuff in Lotus 3 that you can look at? 4 A. In terms of what? 5 Q. So as like a case tracking system, so 6 like a live case you would be able to pull up Lotus 7 and look at what's going on or is it simply some 8 kind of mechanism where you can look at statistics 9 on cases that have already been closed? 10 A. No. It's a case database, so it would 11 show the case, any pleadings filed in the case that 12 were -- where Lotus was used. Letters to the 13 client, notes from the attorney. 14 Q. And you would be able -- 15 A. Hopefully the discovery would be 16 scanned into the electronic file. 17 Q. Okay. Sorry to interrupt there. 18 A. That's all right. 19 Q. So you'd be able to pull those 20 documents up directly in Lotus if you wanted to, 21 right? 22 A. Correct. 23 Q. Are there any public defenders on call 24 24 hours a day for like emergencies? 25 A. No.</p>
<p style="text-align: right;">Page 110</p> <p>1 instruction. 2 Q. Okay. So it has to do with the change 3 that took place in the law, not a change to the 4 defenders' budget or anything of that nature; is 5 that right? 6 A. Correct. 7 Q. Okay. You talked a little bit about 8 how you guys track cases in the public defenders 9 office. Is there any kind of mechanism, any other 10 mechanism we haven't discussed that you guys would 11 use to track your cases or to monitor your cases? 12 A. So everything is contained in Lotus, 13 which is our database. From Lotus I sometimes 14 create other spreadsheets. So I have created a 15 travel spreadsheet that shows which cases went to 16 trial and what the verdicts were in more detail than 17 what the Lotus notes show. 18 So for instance, it may show guilty and 19 not guilty in the Lotus database and in our 20 spreadsheet it might show not guilty of murder 21 first, guilty of trespassing. So it would 22 demonstrate that it was not just a half guilty, half 23 not guilty, but a very successful half guilty, half 24 not guilty. 25 Q. Very good. And so when you're looking</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. So we talked about -- a little bit 2 about determining indigency for defendants, right? 3 A. Correct. 4 Q. And is there any mechanism in place to 5 kind of revisit the determination of indigency later 6 on in the case to make sure that, you know, you guys 7 aren't being bamboozled or kind of fooled by 8 defendants who maybe want to get representation but 9 might not be entitled to it? 10 A. Yes. 11 Q. And what kind of safeguards are in 12 place for that? 13 A. So there is section 600.086 that allows 14 counsel to file a motion in front of the court to 15 have the defendant determined to be not indigent. 16 So for instance, one time a client canceled an 17 office appointment because they were going on a 18 cruise, so we filed a motion and asked the court to 19 determine that the person was not indigent because 20 if they could afford a cruise, they could certainly 21 afford private counsel. And the court granted the 22 motion. 23 Q. Oh, very good. That was a section 24 600.086? 25 A. I believe it's 086, yes.</p>

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<p style="text-align: right;">Page 113</p> <p>1 Q. Okay. Now, you've cited one example of 2 such a motion being filed by your office. Do you 3 happen to know like how many of those motions 4 typically get filed in a year? 5 A. Very few. Maybe five. And it usually 6 has to do with something much less obvious such as 7 posting a very large bond or hiring a private 8 counsel in another case. 9 Q. Okay. So your attorneys just kind of 10 keep an eye out for things that stick out to them 11 and if they notice it, then that's when they'll 12 consider filing the motion? 13 A. They'll come to me and we do all that 14 sort of motions at the indigence docket once a 15 month. 16 Q. Okay. Do you know if they perform any 17 kind of independent investigation as to the 18 indigency determination other than just kind of 19 things that pop out at them? 20 A. Well, the legal assistant reviews the 21 application. If the person indicates that they own 22 a house, then she'll go on the assessor's website to 23 see what the value is of the house. If they 24 indicate they own a car, then she'll look for the 25 Blue Book value of their car and take those things</p>	<p style="text-align: right;">Page 115</p> <p>1 but the request to get a deposition on the basis of 2 like financial reasons? 3 A. No. 4 Q. Have you ever heard of that happening 5 for any other public defenders having their request 6 to take a deposition being denied because of 7 financial reasons? 8 A. I only know it's in my office. I don't 9 know about the other offices. I haven't heard of 10 that, no. 11 Q. Okay. Are any of your depositions 12 taken outside of the state of Missouri? 13 A. We have depositions where the witness 14 may be outside of the state of Missouri, but we do 15 it with the attorney here and the court reporter 16 where the witness is via video. 17 Q. Okay. So that's my next question. So 18 I think -- 19 A. And actually, I misspoke. Via phone. 20 Q. Via phone? 21 A. Yeah. 22 Q. So I think you stated that those 23 depositions do take place sometimes if the witness 24 is out of state, but if it is required it would be 25 done via telephone, right?</p>
<p style="text-align: right;">Page 114</p> <p>1 into consideration. 2 Q. Okay. And let's say somebody applies 3 and they don't, you know, list that house to raise 4 that red flag, is there still somebody kind of 5 looking into whether they have these assets prior to 6 the determination being made or is it kind of taking 7 at face value whatever they put on the application? 8 A. If they do not indicate they have a 9 house, we do not do a search to see if they own real 10 estate. 11 Q. Okay. That would only be if something 12 tips you guys off is when you would do that 13 investigation? 14 A. If it's brought to our attention, yes. 15 Q. So we also talked earlier a little bit 16 about the procedure for obtaining discovery and 17 experts in your cases, right? For the record, you 18 have to -- 19 A. Yes. 20 Q. So have you ever had a request for a 21 deposition been rejected because of financial 22 reasons by the office? 23 A. No. 24 Q. And have you ever denied any of your 25 defenders the -- not the right to get a deposition,</p>	<p style="text-align: right;">Page 116</p> <p>1 A. That's how we've done it in the past, 2 yes. 3 Q. Okay. 4 A. Usually through an agreement with the 5 prosecutor's office. 6 Q. Okay. 7 A. I mean, they've agreed to produce the 8 witness out of state if we agree that the attorneys 9 can remain in St. Louis for the deposition. 10 Q. Okay. Are there any policies or 11 procedures that guide or limit, you know, how many 12 depositions can be taken for a case? 13 A. No. I mean, there's -- there's 14 policies as to when to take a deposition and what 15 information is necessary. 16 Q. Uh-huh. But there's no rule like you 17 can only take three depositions per X type of case, 18 right? 19 A. Not that I'm aware of. 20 Q. It's pretty much just, you know, do 21 what you have to do to get the case ready for trial, 22 right? 23 A. Take the depositions that you think are 24 necessary. 25 Q. And are there any policies mandating a</p>

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<p style="text-align: right;">Page 117</p> <p>1 certain amount of depositions or investigators be 2 used for certain types of cases? 3 A. No. 4 Q. Now, we talked just a little bit about 5 obtaining experts and situations where experts have 6 and have not been approved, right? 7 A. We talked about experts, yes. 8 Q. Okay. We can start off there. That's 9 fine. 10 A. Okay. 11 Q. I think you said earlier that there 12 have been a couple times where there's like a higher 13 level of review that comes after your approval of 14 using an expert, right? 15 A. Yes. 16 Q. And sometimes at that level there has 17 been kind of a second look at which experts are 18 being used because of financial reasons, right? 19 A. Correct. 20 Q. Has there ever been a situation where 21 you said we need to have an expert for this case and 22 the people above you said you can't have an expert 23 of any kind for that case? 24 A. No. 25 Q. Okay. Because it seems like they have</p>	<p style="text-align: right;">Page 119</p> <p>1 vet the case and discuss it and discuss what value 2 the expert would bring to the case before they would 3 ever submit any request. 4 Q. Okay. 5 A. So by the time they submit an E request 6 we've already pretty much decided that that would 7 bring value to the case. 8 Q. Okay. So yeah, I guess what is the 9 procedure for requesting an expert, you mentioned an 10 E request? 11 A. Yes. 12 Q. So what -- how does that process work 13 from start to finish, I guess? 14 A. Within the case in Lotus the attorney 15 submits a request stating what -- who they are 16 asking to retain, what the anticipated cost is, and 17 what the reason is that they're asking for the -- to 18 retain the expert. 19 That's submitted through the database 20 system. I either approve or disapprove, and if I 21 approve and it's over \$500, which most experts would 22 be, it then requires division director approval. 23 Q. And you also mentioned that some kind 24 of conversation would happen before this request 25 goes through, right?</p>
<p style="text-align: right;">Page 118</p> <p>1 tried to just find more fiscally conservative 2 methods or fiscally conservative experts, I guess, 3 but they've never denied you using experts; is that 4 right? 5 A. I don't recall ever being denied an 6 expert, no. 7 Q. And have you ever heard of, you know, 8 any other defenders having their request for an 9 expert denied based on financial reasons? 10 MR. MAUNE: Objection, calls for 11 speculation. 12 Q. (By Mr. Moore) Just what you've heard 13 of, not speculation. 14 A. Not that I've heard of. 15 Q. Okay. And we may have gone over this 16 ground already, but are you aware of any policies or 17 procedures that state like when and how much experts 18 can be appointed or not appointed in cases? 19 A. Well, they're not appointed. They're 20 -- they're retained by us. 21 Q. Right. 22 A. So yes, there are -- there are policies 23 and what information you need to provide to request 24 an expert. Generally we -- before an attorney in 25 the office is going to request an expert, we would</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Generally, yes. 2 Q. Okay. And that would just kind of be 3 like a sit-down meeting with your associates to 4 discuss the case and why it needed an expert? 5 A. Correct. 6 Q. Okay. So I think we discussed earlier 7 about when a trial would be and would not be 8 assigned a second-chair attorney by your office. 9 A. Yes. 10 Q. Is there like any kind of a rule that 11 you're aware of in your office for a, you know, we 12 must have a second-chair attorney here for these 13 types of cases or is it more like a discretion of 14 management? 15 A. No. There is a rule, and actually I 16 forgot one category. So you need to have a second 17 chair for first misdemeanor trial, first two 18 felonies. Now mind you if you have your first two 19 felony trials before you have your first misdemeanor 20 trial, then you don't need an expert -- a second 21 chair for your first misdemeanor trial. 22 Q. Okay. 23 A. And then a second chair for your first 24 sex case. So case in which it's allegations of 25 sexual assault. And a second chair -- you got me</p>

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<p style="text-align: right;">Page 121</p> <p>1 stuck on experts. A second chair for your first</p> <p>2 homicide case.</p> <p>3 Q. Okay.</p> <p>4 A. And also a second chair for your first</p> <p>5 juvenile court certification hearing or transfer</p> <p>6 hearing.</p> <p>7 Q. Okay. And that's like an internal</p> <p>8 policy of the MSPD; is that right?</p> <p>9 A. That's a local area 22 policy.</p> <p>10 Q. Okay. But that's not based on any like</p> <p>11 statute or case law or anything of that nature; is</p> <p>12 that right?</p> <p>13 A. It's based upon the -- the public</p> <p>14 defender requirements of how to run a public</p> <p>15 defender office and on the ethical obligations to,</p> <p>16 you know, provide sufficient supervision.</p> <p>17 Q. Okay. And so -- so are you saying</p> <p>18 there's particular ethical rule that discusses like</p> <p>19 the second chair assignments?</p> <p>20 A. No, no, no.</p> <p>21 Q. Okay.</p> <p>22 A. No.</p> <p>23 Q. There's just -- there's a general</p> <p>24 ethical rule about adequate supervision, and so the</p> <p>25 public defenders office in attempting to comply with</p>	<p style="text-align: right;">Page 123</p> <p>1 A. No.</p> <p>2 Q. No. Does anybody in your office track</p> <p>3 their time?</p> <p>4 A. No. We track it through time sheets.</p> <p>5 We don't track it per case.</p> <p>6 Q. So tell me specifically what you mean</p> <p>7 by that.</p> <p>8 A. So each employee is to record daily how</p> <p>9 much time they spent working.</p> <p>10 Q. So they just kind of put in a chunk of</p> <p>11 time like eight hours or something like that, right?</p> <p>12 A. Or whatever amount of time they spent</p> <p>13 working.</p> <p>14 Q. Okay. Has there ever been a time when</p> <p>15 you guys have tracked your time in smaller</p> <p>16 increments like five minutes or by tenths of an hour</p> <p>17 or anything like that?</p> <p>18 A. Yes.</p> <p>19 Q. And when was that?</p> <p>20 A. I don't remember when it began. It</p> <p>21 ended October 1st, 2016.</p> <p>22 Q. And there's much celebration I'm sure,</p> <p>23 right?</p> <p>24 A. I actually enjoyed it. It made you</p> <p>25 feel you had -- you had been productive during the</p>
<p style="text-align: right;">Page 122</p> <p>1 that has made their own rule regarding second</p> <p>2 chairing trials, right?</p> <p>3 A. So again, this is my personal office</p> <p>4 policy. It's not an MSPD policy.</p> <p>5 Q. Okay.</p> <p>6 A. And it's because we try a large number</p> <p>7 of cases, and sometimes people would try a lot of</p> <p>8 drug cases and then suddenly have a homicide case</p> <p>9 and they would not have a second chair, and there's</p> <p>10 a significant difference between defending a</p> <p>11 homicide case and defending a drug case.</p> <p>12 Q. Okay. So yeah, this is my</p> <p>13 misunderstanding of the rule. So this is a rule</p> <p>14 that you put into place for your district, right?</p> <p>15 A. Correct.</p> <p>16 Q. It's not a rule that the whole public</p> <p>17 defender system has in place, right?</p> <p>18 A. No.</p> <p>19 Q. And as far as you know, that's not a</p> <p>20 rule that is embodied in any like statute or like</p> <p>21 specific ethical rule anywhere that you have to</p> <p>22 second chair these types of cases or anything,</p> <p>23 right?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you track your time?</p>	<p style="text-align: right;">Page 124</p> <p>1 day when you could look back and see exactly what</p> <p>2 you had done.</p> <p>3 Q. I've never heard an attorney say that</p> <p>4 they enjoyed billing by tenths of an hour ever.</p> <p>5 A. I wasn't billing. I was only tracking.</p> <p>6 Q. Oh, that's the difference I guess then.</p> <p>7 Okay. Fair enough. So it ended October 2016.</p> <p>8 Can't really recall when it started, right?</p> <p>9 A. Correct.</p> <p>10 Q. And I'm guessing that was in connection</p> <p>11 with some particular like a study that was going on;</p> <p>12 is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And which study was that?</p> <p>15 A. I couldn't tell you which one it was.</p> <p>16 Q. Okay. But in any event, you're not --</p> <p>17 A. It was connected to the RubinBrown</p> <p>18 study.</p> <p>19 Q. Okay. Good. But you guys aren't</p> <p>20 currently tracking your time in those increments</p> <p>21 anymore, right?</p> <p>22 A. No, we are not.</p> <p>23 Q. Do you recall like what kind of period</p> <p>24 of time you had to track your time?</p> <p>25 A. If I was going to guess, I would say it</p>

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<p style="text-align: right;">Page 125</p> <p>1 was 2014 to 2016.</p> <p>2 Q. Like a couple years?</p> <p>3 A. Yes. And then there was an earlier</p> <p>4 period of time tracking, but it was before I was</p> <p>5 with the system.</p> <p>6 Q. Okay. Now, prior to that had you had</p> <p>7 any experience, you know, billing your time in that</p> <p>8 manner?</p> <p>9 A. Back when I was with Kanefield & Mohme.</p> <p>10 Q. Back in the day?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. 1980.</p> <p>14 Q. Okay. And so other than those two</p> <p>15 instances, I guess three, you mentioned another one,</p> <p>16 any other times when you had to bill your time in</p> <p>17 that manner?</p> <p>18 A. Actually I did when I did termination</p> <p>19 of parental rights cases in juvenile court. The</p> <p>20 court would pay per statute by hour. So I did have</p> <p>21 to track my time in those cases --</p> <p>22 Q. Okay.</p> <p>23 A. -- in both the trials and appeals.</p> <p>24 Q. So I guess tell me a little bit about</p> <p>25 when you were keeping your time in those increments.</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. Right. And so my question is basically</p> <p>2 just like who put on the training for how to bill</p> <p>3 your time, was that a public defender or did some</p> <p>4 third party put the training on?</p> <p>5 A. So the public defender put on the</p> <p>6 training on how to track your time. We never</p> <p>7 billed.</p> <p>8 Q. Okay. Right. But the public defender</p> <p>9 had not really tracked their time previously; is</p> <p>10 that right?</p> <p>11 A. No. I think the training was on here</p> <p>12 are the categories, here's where you click. This is</p> <p>13 how it will show up in the database. Here's how you</p> <p>14 can read it if you want to know.</p> <p>15 Q. Okay. And if you can recall back to</p> <p>16 that training, I mean, did they tell you, you know,</p> <p>17 there's your task that you can't bill for or was it</p> <p>18 all pretty much just track whatever you're doing and</p> <p>19 put the time in?</p> <p>20 A. It was learn the categories and see if</p> <p>21 your work that you were doing fits into one of those</p> <p>22 categories and track it as the category. If it's</p> <p>23 not in those categories, then it's probably not work</p> <p>24 because the categories covered everything.</p> <p>25 Q. Okay. So have you done anything as a</p>
<p style="text-align: right;">Page 126</p> <p>1 Whenever you started doing that for the public</p> <p>2 defender, was there any kind of a training about how</p> <p>3 you should bill your time. For example, like the</p> <p>4 way you write the entries or tasks that you bill for</p> <p>5 and don't bill for?</p> <p>6 A. So we -- it was I believe presented at</p> <p>7 one of our training workshops as to how to use the</p> <p>8 system.</p> <p>9 Q. And so as I understand it, this study</p> <p>10 was performed by like some third-party researcher;</p> <p>11 is that correct?</p> <p>12 A. What study?</p> <p>13 Q. The one that you were tracking your</p> <p>14 time for, 2014 to 2016?</p> <p>15 A. So was the RubinBrown study done by a</p> <p>16 third-party researcher?</p> <p>17 Q. Right.</p> <p>18 A. I don't think they were researchers. I</p> <p>19 think they were accountants.</p> <p>20 Q. Okay. But it wasn't done by like -- it</p> <p>21 wasn't a study that was prepared by the public</p> <p>22 defender, right?</p> <p>23 A. The -- RubinBrown is the person who</p> <p>24 created the report, but the public defender</p> <p>25 participated in the input of information.</p>	<p style="text-align: right;">Page 128</p> <p>1 district defender to kind of prepare your offices</p> <p>2 for what I think you testified earlier was kind of a</p> <p>3 higher caseload?</p> <p>4 A. To prepare them for a higher caseload?</p> <p>5 Q. Yeah, or to prepare your office, you</p> <p>6 know, for the -- this high caseload?</p> <p>7 A. I'm -- I'm not sure I understand your</p> <p>8 question.</p> <p>9 MS. SHIPMA: I was just like -- don't</p> <p>10 have the microphone, but I object. I think that</p> <p>11 question is vague.</p> <p>12 Q. (By Mr. Moore) I'll go ahead and</p> <p>13 strike that one. That was vague.</p> <p>14 Have you held any training sessions on</p> <p>15 managing dockets for your attorneys?</p> <p>16 A. So my attorneys don't have dockets.</p> <p>17 They have cases. So the city of St. Louis court</p> <p>18 system is set up differently than most of the other</p> <p>19 courts in the state of Missouri. So we do not have</p> <p>20 dockets.</p> <p>21 Q. And I guess --</p> <p>22 A. We have dockets. Just not dockets that</p> <p>23 you're thinking of.</p> <p>24 Q. Change the word dockets to caseload --</p> <p>25 (Court reporter interruption.)</p>

32 (Pages 125 to 128)

<p style="text-align: right;">Page 129</p> <p>1 Q. (By Mr. Moore) Do you have any 2 training sessions on -- for your attorneys on how to 3 manage their caseloads? 4 A. So I mean, most of the training is on 5 how to represent your client and what the law is, so 6 by learning those things you learn how to manage 7 your caseload. I'm just confused. I'm not sure 8 exactly what you're asking me. 9 Q. So I imagine there are trainings on 10 like the substance of law and sort of pleadings and 11 things that they'll be filing as they represent 12 these defendants, right? 13 A. Correct. 14 Q. Is there any training more on the 15 administrative side where you say you're going to 16 have a lot of cases so here's the way that you 17 manage them all? You do this task and this task or 18 you don't do this or that, stuff like that. 19 A. Okay. I understand now. Thank you. I 20 think it's more informal. We sit down with 21 attorneys when they begin and talk to them about 22 calendarizing so that they make certain that they make 23 all their court dates and how to keep track of them. 24 We explain the trial docket that 25 happens in the city of St. Louis so that they can</p>	<p style="text-align: right;">Page 131</p> <p>1 see if I felt like somebody was slipping behind too 2 far and my taking the initial action and now I think 3 the attorneys are comfortable that they can take 4 that initial step and come and ask for assistance. 5 Q. Okay. Are you aware of section 6 600.063? 7 A. Sure. 8 Q. And what is that? 9 A. It's a statute about asking for meeting 10 with the presiding judge concerning caseload. 11 Q. Okay. Have you ever utilized that 12 particular statute? 13 A. So I have spoken to the presiding judge 14 about that statute and the way the statute is 15 written, and I don't have it in front of me, but is 16 that the one that talks about an individual 17 attorney? 18 Q. I believe so, but I -- I think you have 19 the right statute. 20 A. Okay. So I have told the court that 21 there are times when I have stopped assigning cases 22 to an individual attorney and I have asked the court 23 do they want me to bring that to their attention 24 under 063 or not bring it to their attention unless 25 it becomes an issue that we cannot take any more</p>
<p style="text-align: right;">Page 130</p> <p>1 learn when their cases will be right for trial and 2 when they'll be probably able to obtain 3 continuances. And then we work with those who -- 4 who need it on just being more organized. 5 Q. Okay. Now, do you provide any 6 resources concerning their ability to like deny 7 further cases if the caseload becomes too much at 8 those initial trainings or conversations? 9 A. So we've always talked at office 10 meetings about if you feel like you have too much, 11 come see us. In an office meeting after the 12 Hinkebein decision came out we let the attorneys 13 know that we were going to be meeting with each of 14 them individually. 15 We provided them with information on 16 their ethical obligations and on the supervisor's 17 ethical obligations, and then we had individual 18 meetings with every attorney to see how they felt 19 and whether they felt that they were not meeting 20 their ethical obligations. 21 Q. So did the way that you trained change 22 post-Hinkebein at all or is it pretty much the same 23 that you were doing pre-Hinkebein? 24 A. More formal post-Hinkebein. 25 Pre-Hinkebein it was -- it was more my watching to</p>	<p style="text-align: right;">Page 132</p> <p>1 cases in the entire office? 2 Q. Okay. And so I guess you've never 3 reached that point where the entire office cannot 4 accept more cases; is that right? 5 A. Correct. Well, I think we reached that 6 point back in 2011 and '12 prior to the Waters 7 decision. 8 Q. Okay. But you know, since then haven't 9 filed any of these kind of motions 600.063? 10 A. The circuit put in caseload crisis 11 intervention actions which have remained in effect 12 since 2012, so it's been more informal with the 13 judges of the circuit. 14 Q. Okay. But you haven't filed any such 15 motion -- 16 A. No, I have not. 17 Q. -- because it hasn't been necessary, I 18 guess, right? Have you ever been judicially 19 determined to provide ineffective assistance of 20 counsel? 21 A. Personally? No. 22 Q. I think you mentioned a couple times 23 where you have had that take place with attorneys in 24 your office -- or your district, right? 25 A. Correct.</p>

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<p style="text-align: right;">Page 133</p> <p>1 Q. One time was for lack of investigation 2 and one was for conveying incorrect information? 3 A. Correct. 4 Q. So without going into too many details 5 I guess for the lack of investigation case do you 6 recall generally what the -- what kind of 7 investigation was omitted? 8 A. The attorney did not obtain the 9 dispatch tapes from the police vehicle and the 10 dispatch tapes showed that the police officer's 11 testimony was not credible. 12 That case had a co-defendant and 13 co-defendant's counsel did obtain those dispatch 14 tapes and the case was I think -- I believe he went 15 to trial and was found not guilty. So at that point 16 the post-conviction attorney filed a post-conviction 17 action raising that point. 18 Q. And do you recall if the co-defendant 19 was represented by the public defender? 20 A. Co-defendant was represented by a 21 volunteer attorney who was an associate at Thompson 22 Coburn who was placed in our office for one year. 23 Q. Placed in your office for a year. What 24 do you mean by that exactly? 25 A. During the recession, 2008, 2009 when</p>	<p style="text-align: right;">Page 135</p> <p>1 found to have rendered ineffective assistance of 2 counsel, is there -- was there a reason given why 3 these tapes were not obtained, if you can recall? 4 A. I did not attend the post-conviction 5 hearing, so I can't tell you what he testified to, 6 but I think my recollection is that he just -- it 7 wasn't something that he did in his cases in terms 8 of pretrial investigation. 9 Q. Just as a matter of course, it wasn't a 10 step that he took for his cases -- 11 A. Correct. 12 Q. Didn't have anything to do with like a 13 lack of resources or anything for why he didn't 14 obtain those tapes; is that right? 15 A. I think it was because he had so many 16 cases that it wasn't a step that he took on a 17 regular basis. At that point he would've had a 18 caseload of probably over a hundred cases, most of 19 which would have been felonies. 20 Q. So is that speculation or do you know 21 for certain that's why he didn't get the -- didn't 22 get the tapes in that case? 23 A. I don't -- I don't know that it's -- I 24 don't know that it's for certain, but I don't think 25 it's speculation. It's based upon conversations</p>
<p style="text-align: right;">Page 134</p> <p>1 the private firms could not afford to bring their 2 associates on -- 3 Q. Ah. 4 A. -- they placed some of their associates 5 at a lower salary in either judicial positions as 6 clerks or in not-for-profits, and we benefited from 7 having one of those attorneys in our office. 8 Q. Okay. So this was an attorney who was 9 actually working in your office just like any of 10 your other defenders would have been working in your 11 office with the same resources and access to staff 12 and everything as the other defenders, right? 13 A. Except that he had a significantly 14 smaller caseload and only handled misdemeanors. 15 Q. Okay. 16 A. Because he was only going to be there 17 for one year. 18 Q. Okay. But it sounded like he was -- 19 you said it was Thompson Coburn, I think? 20 A. Yes. 21 Q. He wasn't like at Thompson Coburn's 22 offices working with their staff and their resources 23 on these cases, right? 24 A. No. 25 Q. And as far as the attorney who was</p>	<p style="text-align: right;">Page 136</p> <p>1 with him about the case. 2 Q. Okay. And how about the other 3 ineffective assistance case involving conveying 4 incorrect information? 5 A. Correct. 6 Q. Do you know in a general sense what 7 that had to do with? 8 MS. SHIPMA: I'm going to object to any 9 kind of recitation of communication between the 10 attorney and the client. 11 Q. (By Mr. Moore) That's fair enough. 12 I'll just ask, did it have to do with like incorrect 13 legal analysis? 14 A. Yes. 15 Q. Okay. And do you know if that had to 16 do with any claimed lack of resources or anything or 17 was it simply just an incorrect legal analysis on an 18 issue? 19 A. Well, again, that was an attorney who 20 at that time had over a hundred cases, so I don't 21 know exactly why he provided that information. 22 Q. So you don't know for sure, but nobody 23 has told you that it was because of like a lack of 24 resources or anything, right? 25 A. Correct.</p>

34 (Pages 133 to 136)

<p style="text-align: right;">Page 137</p> <p>1 Q. So I believe there's a statutory 2 section 600.090.2 that authorizes public defender to 3 file a lien with the court in order to recover 4 payment for their services. Does that sound 5 familiar?</p> <p>6 A. Yeah.</p> <p>7 MS. SHIPMA: I'm going to object. Do 8 you have a copy of that that you can show her if 9 you're going to ask her to testify about the 10 contents of the statute?</p> <p>11 MR. MOORE: No, I don't, but I just 12 asked her if she was familiar with it. I think you 13 said yes, right?</p> <p>14 A. I know we can file a lien. Is it in -- 15 is it in 090? That doesn't sound like a statute 16 that I read on a regular basis, and I read a lot of 17 600 on a regular basis.</p> <p>18 Q. (By Mr. Moore) We can forget the 19 specific section by the way.</p> <p>20 A. Okay.</p> <p>21 Q. The bigger question is whether you're 22 familiar that there is a statute out there -- 23 (Court reporter interruption.)</p> <p>24 Q. (By Mr. Moore) Are you aware that 25 there is a statute out there that authorizes the</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Okay. Now, you stated earlier I think 2 that you have about 30 attorneys or so in your 3 office?</p> <p>4 A. Correct.</p> <p>5 Q. And are all their caseloads pretty 6 comparable or is there kind of discrepancy or 7 difference between some attorney's caseloads versus 8 other attorney's caseloads?</p> <p>9 A. There's a big discrepancy right now 10 because two of the attorneys just started within the 11 last two weeks, three weeks. And four of the 12 attorneys started like maybe a month or so before 13 that.</p> <p>14 So their caseloads are building up. 15 And then there are attorneys who have been there 16 longer whose caseloads are larger, and then there's 17 attorneys who have very serious cases. So their 18 case numbers may be lower, but the case severity is 19 higher.</p> <p>20 Q. And for the attorneys who work in the 21 more serious cases, what kind of discrepancy would 22 you be looking at as far as caseloads are concerned?</p> <p>23 A. Maybe five to ten fewer cases.</p> <p>24 Q. Okay. Do you guys ever do limited 25 entries of appearance for defendants in order to</p>
<p style="text-align: right;">Page 138</p> <p>1 public defender to file a lien with a court in order 2 to recover payment for their services?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Now, do you file such liens in 5 every case?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. Unless we opened up the case and then 9 we discover after opening it that a private counsel 10 has entered before we had an opportunity to do any 11 work on the case other than opening it.</p> <p>12 Q. And so why would that change whether 13 you filed the lien?</p> <p>14 A. Because we didn't do any work on the 15 case.</p> <p>16 Q. Oh, okay. Fair enough. Otherwise, you 17 say that you file such a lien on every single case, 18 right?</p> <p>19 A. Yes. There's a few circumstances where 20 a person doesn't get a lien, such as they died in 21 the course of the representation or their mental 22 health keeps them from being competent, we do not 23 file liens on those cases. And we do not file liens 24 in the cases of juveniles or applicants with adult 25 cases who are under 18.</p>	<p style="text-align: right;">Page 140</p> <p>1 represent them at bond hearings?</p> <p>2 A. No.</p> <p>3 Q. And why is that?</p> <p>4 A. Because we request bond reductions for 5 our clients with a full entry of appearance.</p> <p>6 Q. Okay. I think you testified earlier 7 that there's no wait list currently, right?</p> <p>8 A. Correct. Yes.</p> <p>9 Q. Can you talk to me a little bit about 10 the procedure for closing cases? How does that go 11 and is there ever a situation where case is pretty 12 much done but stays open?</p> <p>13 A. There shouldn't be. So when the case 14 is resolved the attorney puts the file with a 15 closing sheet that we have created with the 16 appropriate disposition code in the closing clerk's 17 box so it may remain open a week or so as he gets 18 through them if there's a large number, but the 19 attorneys are supposed to close them quickly and I 20 monitor their cases.</p> <p>21 If their caseload is extremely high I 22 look to see if they have open cases that should be 23 closed. The one exception is the conflict attorneys 24 are often not in the office physically for a period 25 of time, so their cases may close and they don't</p>

35 (Pages 137 to 140)

<p style="text-align: right;">Page 141</p> <p>1 bring them back to the office until they physically 2 get back to the office.</p> <p>3 Q. And how long could it be before they 4 show back up to the office to close the file out?</p> <p>5 A. Like a week or so.</p> <p>6 Q. Okay. Do defenders ever attend trials 7 not as a second chair, but just to kind of spectate, 8 kind of watch the trials?</p> <p>9 A. No. They may stop in for a closing 10 argument or we may send a new attorney to observe a 11 voir dire, but they don't just sit around and watch 12 trials, no.</p> <p>13 Q. So are there circumstances where a 14 closed case could be reopened?</p> <p>15 A. Yes.</p> <p>16 Q. What kind of situations would that be?</p> <p>17 A. Where it was closed because a private 18 attorney entered and then the private attorney is 19 allowed to withdraw and the court makes a 20 determination that the person is indigent and we 21 accept the case back.</p> <p>22 Q. Okay. And so when the case is reopened 23 does it count as a new case or is it just the same 24 case?</p> <p>25 A. No, it's the same case.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Okay. Anything else since then?</p> <p>2 A. We've asked them to stop issuing cases 3 that they can't win.</p> <p>4 Q. Very good. And anything else other 5 than that?</p> <p>6 A. Nothing I can think of.</p> <p>7 Q. Okay. So earlier we talked a little 8 bit about how some of your attorneys are kind of 9 inexperienced, I guess; is that right?</p> <p>10 A. Are kind of inexperienced?</p> <p>11 Q. Inexperienced.</p> <p>12 A. Yes.</p> <p>13 Q. Right? And as a result of that 14 inexperience they sometimes don't like recognize 15 when to use experts; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. So it's not that they're being denied 18 experts because of financial reasons, it's simply 19 that they are unable to recognize when they need 20 them, right?</p> <p>21 A. Correct.</p> <p>22 Q. And so is there any kind of training 23 whenever they start out to help them identify when 24 they would need to consider getting an expert?</p> <p>25 A. Yes. So generally the expert that a</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. Okay. As far as like the statistics or 2 whatever, would it still be counted as a new case 3 that gets opened?</p> <p>4 A. No.</p> <p>5 Q. So I think earlier we talked about a 6 coalition -- I forget the name of the coalition now. 7 But it's kind of a group of private attorneys who 8 are assisting the public defender on some criminal 9 cases, right?</p> <p>10 A. Correct.</p> <p>11 Q. What is the name of that coalition?</p> <p>12 A. Missouri Coalition for the Right to 13 Counsel.</p> <p>14 Q. Okay. Are there any kind of similar 15 groups out there that also provide those kind of 16 services for the public defender and their clients?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Okay. Have you ever tried to 19 collaborate with the prosecutors in your 20 jurisdiction on, you know, the caseloads and kind of 21 determine if anything can be done in a cooperative 22 manner about caseloads?</p> <p>23 A. When we had our Waters meeting in 2012 24 after the Waters decision, the prosecutors attended 25 and participated.</p>	<p style="text-align: right;">Page 144</p> <p>1 new attorney would see the need for on their cases 2 would be a mental health expert. So there is 3 training to help them identify the signs of a person 4 not being competent to proceed to trial.</p> <p>5 Q. And so all the new attorneys receive 6 that training, right?</p> <p>7 A. Well, the most recent group hasn't yet. 8 That -- that's part of the problem is that there's 9 always new attorneys and they don't come in in one 10 large group. They trickle in on a regular basis.</p> <p>11 Q. And there's just the four annual 12 trainings, I guess, that we discussed earlier?</p> <p>13 A. There are some other trainings the 14 training department puts on, but the ones that the 15 new attorneys attend are the two for new attorneys 16 and then the new employee orientation, which I think 17 is more administrative and it's just a day long.</p> <p>18 Q. Okay.</p> <p>19 A. Like here's how to do your time sheet, 20 here's how to request leave.</p> <p>21 Q. Uh-huh.</p> <p>22 A. Those sort of things.</p> <p>23 Q. Okay. So as far as, you know, training 24 on when to use experts, I mean, is that something 25 that could be done via like a brochure or some kind</p>

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<p style="text-align: right;">Page 145</p> <p>1 of new attorney packet whenever they each answer</p> <p>2 them and they kind of leaf through and apprise</p> <p>3 themselves of the way the cases are kind of run?</p> <p>4 A. I don't think a brochure is going to</p> <p>5 educate an attorney. An attorney just has to gain</p> <p>6 the experience to be able to evaluate the case and</p> <p>7 know when it's good.</p> <p>8 Q. Okay. And these new attorneys, they</p> <p>9 could -- they could always come and ask you, you</p> <p>10 know, if they -- you know, they think an expert</p> <p>11 would be required, right?</p> <p>12 A. Yes, and they often do.</p> <p>13 Q. And they could go ask some of the more</p> <p>14 senior attorneys whether they thought such an expert</p> <p>15 would be needed as well, right?</p> <p>16 A. Right. The issue isn't their ability</p> <p>17 to go ask. The issue is their ability to recognize</p> <p>18 that they need to go ask.</p> <p>19 Q. Right. And we talked a little bit</p> <p>20 earlier about continuances in the criminal cases.</p> <p>21 Do you recall that conversation?</p> <p>22 A. Yes.</p> <p>23 Q. I think you said that they are often</p> <p>24 requested and they're regularly granted, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 147</p> <p>1 other private practice's attorney asking for a</p> <p>2 continuance, right?</p> <p>3 A. So if you look at the docket in the</p> <p>4 city of St. Louis what you'll find is that towards</p> <p>5 the top of the docket the old cases are the public</p> <p>6 defender cases that are heading to trial that they</p> <p>7 have not yet had time to prepare for trial.</p> <p>8 Q. Are you saying --</p> <p>9 A. So we're still asking for continuances.</p> <p>10 Q. Sorry to interrupt.</p> <p>11 A. That's okay.</p> <p>12 Q. Are you saying the public defender asks</p> <p>13 for more continuances than private attorneys or are</p> <p>14 you just saying that --</p> <p>15 A. I can only speak to the city --</p> <p>16 (Court reporter interruption.)</p> <p>17 Q. (By Mr. Moore) That's okay. You can</p> <p>18 go ahead.</p> <p>19 A. I can only speak to the continuance</p> <p>20 request that I see in the city of St. Louis, and the</p> <p>21 private attorney generally asks for a continuance</p> <p>22 until they are paid and then they resolve the case</p> <p>23 with a plea of guilty.</p> <p>24 Q. Okay.</p> <p>25 A. So the continuance request reasons are</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. Now, getting continuances in a case is</p> <p>2 pretty typical of the legal process, right?</p> <p>3 A. Yes.</p> <p>4 Q. And do you have any kind of awareness</p> <p>5 of how private criminal defense attorneys operate?</p> <p>6 A. In terms of getting continuances?</p> <p>7 Q. Yeah, we'll get to that too, but just</p> <p>8 generally speaking do you have a general knowledge</p> <p>9 of how private criminal defense attorneys operate?</p> <p>10 A. Generally.</p> <p>11 Q. And they ask for continuances too,</p> <p>12 right?</p> <p>13 A. Sure.</p> <p>14 Q. And so it's just kind of part of the</p> <p>15 legal process, not really anything specific to like</p> <p>16 the public defender, right?</p> <p>17 A. Well, except that a large number of our</p> <p>18 continuances are because we are not yet prepared.</p> <p>19 We either haven't reviewed the discovery provided to</p> <p>20 us by the state or haven't had an opportunity to do</p> <p>21 independent investigation. So those continuance</p> <p>22 requests generally are related to the fact that the</p> <p>23 attorneys have too many cases.</p> <p>24 Q. But the fact that you're getting a</p> <p>25 continuance is no different from, you know, any</p>	<p style="text-align: right;">Page 148</p> <p>1 different.</p> <p>2 Q. Uh-huh. But the fact of just getting a</p> <p>3 continuance, you wouldn't say that's atypical of</p> <p>4 how, you know, cases -- it's not atypical in</p> <p>5 criminal cases, right?</p> <p>6 A. To get a continuance?</p> <p>7 Q. Right.</p> <p>8 A. No.</p> <p>9 Q. And I don't do criminal work, but does</p> <p>10 the city utilize a rolling docket for the criminal</p> <p>11 stuff as well?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So that's the docket they'll</p> <p>14 just keep putting up for trial every 30 days and</p> <p>15 then you'll kind of move your way up the docket,</p> <p>16 correct?</p> <p>17 A. It's a little bit different than the</p> <p>18 civil -- civil docket.</p> <p>19 Q. Okay.</p> <p>20 A. So in the criminal docket there's one</p> <p>21 criminal assignment division. The cases are on a</p> <p>22 six-week rotation and the motions are heard in the</p> <p>23 criminal assignment division as opposed to being</p> <p>24 sent out to the equity divisions.</p> <p>25 Q. So you're saying that the same division</p>

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<p style="text-align: right;">Page 149</p> <p>1 will hear the motions as it administers the docket?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So I think civil they split that</p> <p>4 up?</p> <p>5 A. Correct.</p> <p>6 Q. Which I -- never mind. Okay. But is</p> <p>7 the rolling docket every you said 60 days?</p> <p>8 A. Every six weeks.</p> <p>9 Q. Six weeks, okay.</p> <p>10 A. Every six weeks minus any nonjury</p> <p>11 weeks.</p> <p>12 Q. Okay. Now, we discussed earlier, you</p> <p>13 know, particular motions. And I think there was</p> <p>14 some speculation about when time or experience would</p> <p>15 have kept defenders from filing motions. Do you</p> <p>16 recall that?</p> <p>17 A. Yes.</p> <p>18 Q. Are you aware of any specific instance</p> <p>19 where a defender said to you I was unable to file</p> <p>20 this motion because I didn't have the time or</p> <p>21 experience to do it?</p> <p>22 A. No.</p> <p>23 Q. It's just kind of guess -- guessing</p> <p>24 based on your knowledge of what you believe to be</p> <p>25 the caseloads and things of that nature, right?</p>	<p style="text-align: right;">Page 151</p> <p>1 Q. That may be true. My question was more</p> <p>2 just about you said that the reason these motions</p> <p>3 wouldn't get filed is because they didn't recognize</p> <p>4 sometimes that they should be filed, right?</p> <p>5 A. Correct.</p> <p>6 Q. And that would be based on like the</p> <p>7 experience of the attorney and how some of them are</p> <p>8 inexperienced and new to the job, right?</p> <p>9 A. Correct.</p> <p>10 Q. Do you have any awareness of like what</p> <p>11 turnover is like in private firms or other</p> <p>12 governmental agencies that employ attorneys?</p> <p>13 A. I have no idea.</p> <p>14 Q. Do you know whether the amount of</p> <p>15 turnover in the public defender system is any</p> <p>16 different than those private firms?</p> <p>17 A. I don't know.</p> <p>18 Q. So it could be just the same as any</p> <p>19 other firm, you just don't know for sure; is that</p> <p>20 right?</p> <p>21 A. So most of the criminal defense firms</p> <p>22 in the city of St. Louis are one-person firms.</p> <p>23 Q. Uh-huh. Like --</p> <p>24 A. So they don't have turnover amongst</p> <p>25 themselves.</p>
<p style="text-align: right;">Page 150</p> <p>1 A. No. I mean, I've had specific</p> <p>2 instances where I've talked to an attorney about a</p> <p>3 case after it's resolved and discover there may have</p> <p>4 been a suppression issue that they didn't litigate.</p> <p>5 There may have been a speedy trial issue that they</p> <p>6 didn't litigate or a docket issue that they didn't</p> <p>7 litigate.</p> <p>8 So it's generally because they didn't</p> <p>9 recognize it as an issue. Or it's because the</p> <p>10 defendant wanted to just resolve the case with a</p> <p>11 plea of guilty because they couldn't make bond.</p> <p>12 Q. Okay. Not necessarily because they</p> <p>13 didn't have time or the financial support to file</p> <p>14 those motions, right?</p> <p>15 A. I don't know if time would be the</p> <p>16 reason. Financial would not be the reason, but it's</p> <p>17 -- it's more the experience issue.</p> <p>18 Q. Okay. And the experience issue has to</p> <p>19 do with the amount of turnover in the office, I</p> <p>20 guess; is that right?</p> <p>21 A. But the turnover has to do with the</p> <p>22 caseload. So because people have so many cases and</p> <p>23 so many cases have to be prepared for trial you can</p> <p>24 only keep up with that frantic pace for so long and</p> <p>25 then people move to other jobs.</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Well, and -- like just private firms,</p> <p>2 so civil included in that, right? Do you have</p> <p>3 any --</p> <p>4 A. So I have no idea what their turnover</p> <p>5 is.</p> <p>6 Q. Okay. I think you were talking earlier</p> <p>7 about like the amount of juvenile cases that are</p> <p>8 coming through in the last couple years, right?</p> <p>9 A. Yes.</p> <p>10 Q. I think you said something like there</p> <p>11 are less juvenile cases getting filed because public</p> <p>12 defender was successful in 2017 in winning those</p> <p>13 cases, right?</p> <p>14 A. I think fiscal year 2017 is what I</p> <p>15 referred to.</p> <p>16 Q. Okay. But that's -- that's correct,</p> <p>17 right?</p> <p>18 A. I think that was one of the factors</p> <p>19 that played into the lack of issuance of cases.</p> <p>20 Q. Okay.</p> <p>21 A. During that time was the first time we</p> <p>22 had a juvenile specialist in juvenile court.</p> <p>23 Q. Okay. Talk to me a little bit about</p> <p>24 the open pleas. Is that what they're called?</p> <p>25 A. Yes, open pleas are blind pleas.</p>

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<p style="text-align: right;">Page 153</p> <p>1 Q. Heard a little bit about that. Again, 2 I don't do criminal practice. My understanding is 3 that, correct me if I'm wrong, but you just kind of 4 show up at court and your clients are agreeing to 5 plea guilty, right, but there's not really any plea 6 deal on the table, right? Maybe it's wrong. Just 7 tell me how it works. 8 A. No, I'm just laughing because you don't 9 just show up in court. I mean, we don't get to the 10 point of where you're in front of a judge for a plea 11 of guilty until you've had communication and counsel 12 with your client and your client has determined that 13 it's in the decision they've made is to enter a plea 14 of guilty to the charge. 15 So it's more than just showing up. 16 You're not the first person who has used that 17 phrase, and having done them I can assure you it's a 18 lot more than just showing up. 19 Q. Fair enough. Fair enough. Just tell 20 me how this blind plea stuff works exactly, I guess. 21 A. So in court -- let's just talk about 22 the in-court procedure. 23 Q. Okay. 24 A. You would have notified the court that 25 you want the case assigned to a judge for a plea of</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. Okay. But the issues with the open 2 pleas and all that sort of thing, that's not as a 3 result of any like lack of funding to the public 4 defender or time of resources. The issues inherent 5 in that process appear to be as a result of this 6 policy by the circuit attorney; is that right? 7 A. But the result, which is more important 8 in my mind, is that it adds an additional burden to 9 the attorney. So whereas in a different 10 jurisdiction you may be able to say to your client 11 the state is recommending this sentence if you 12 choose to enter a plea of guilty -- 13 Q. Uh-huh. 14 A. -- would you like it or would you not 15 like it, case resolved, you go to court. 16 Q. Okay. 17 A. That what could be 30 to one hour 18 conference now could become two to three or four 19 meetings with a client to get to the point where the 20 client trusts you that you know what you're talking 21 about and to get the case in a position where you 22 can get it in front of a judge and get a reasonable 23 outcome. 24 Q. Okay. But you said it was a burden, an 25 initial burden, right?</p>
<p style="text-align: right;">Page 154</p> <p>1 guilty. The court would assign it to a judge. You 2 would schedule it within a week's time period 3 because they're assigned by weeks. 4 And then you would appear before the 5 court, and each judge does it differently. Some 6 will meet with you ahead of time and the prosecutor 7 and want to hear the facts of the case and what both 8 sides are asking for. Some will take the bench and 9 start the on-the-record proceedings. 10 So as the attorney in those cases, you 11 need to be able to navigate what judge the case is 12 going to be in front of and you need to be able to 13 advise your client what the possible outcomes are 14 and what the probable outcome is, and that's the 15 really hard part is advising somebody what the 16 probable outcome is because you can't read a judge's 17 mind. And you may think you know what's going to 18 happen, but you don't always know. 19 Q. And that -- the whole open plea thing 20 is as a result of a policy by the St. Louis City 21 prosecutor's office; is that correct? 22 A. It is a result of the recommendations 23 that the circuit attorney's office makes on their 24 cases and their refusal to provide timely 25 recommendations or any recommendations on cases.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Correct. 2 Q. And that would be a burden that was 3 imposed as a result of this circuit attorney policy, 4 right? 5 A. Yes. 6 Q. And I think you said also that they're 7 maybe going to change that policy with a new circuit 8 attorney that had come in; is that right? 9 A. That was part of her campaign promise, 10 but it's not yet been fulfilled. 11 Q. Okay. It's coming down the pipeline 12 probably? 13 A. We're a year in already. 14 Q. Okay. And so as far as the resources 15 your attorneys have in the office to work their 16 cases up, I understand that they have access to 17 Westlaw? 18 A. Correct. 19 Q. And are there any limitations on 20 Westlaw that are really cumbersome or onerous that 21 you're aware of? 22 A. There's a couple things. You know, 23 whenever you want to click on a -- a larger article, 24 you can't get it. It's always not in our 25 subscription. I don't think -- is Missouri practice</p>

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<p style="text-align: right;">Page 157</p> <p>1 I don't think is in our subscription. All the stuff 2 over on the right is not in our subscription. 3 Q. Okay. The stuff on the right. So 4 other than in those limitations, I mean, are you 5 aware of anything else that's really, you know, 6 onerous about your access to legal resources, legal 7 research resources? 8 A. Westlaw -- no Westlaw is easily 9 accessible. 10 Q. Okay. And do you have any kind of 11 internal servers or anything where prior pleadings 12 or examples would be stored? 13 A. Yes. 14 Q. And all your attorneys have access to 15 those prior pleadings and examples? 16 A. They do. 17 Q. Any other resources that your attorneys 18 can utilize whenever they're working these cases up 19 other than of course, you know, investigators and 20 experts and things we've already discussed? 21 A. I would say those are the main ones. 22 We also have what we call an area 22 database where 23 somebody does something that we think will need to 24 be used again, we try to preserve it in there. 25 Q. And so that's like another database</p>	<p style="text-align: right;">Page 159</p> <p>1 preparing a case in front of judge A and I know 2 judge A will rule a certain way on things and judge 3 B won't, I don't know who the judge is until I get 4 there. So it affects -- that can affect your 5 preparation. And because we have been successful 6 more cases go to trial. 7 Q. So the rolling docket -- strike that. 8 Is there like an informal time for 9 criminal cases, where you can go in for informals? 10 A. You can always show up in Division 16 11 if there's a judge there. You can do an informal. 12 Q. Okay. 13 A. It's not -- it's not like the civil 14 docket. 15 Q. Okay. Would there be anything 16 preventing the public defender from just en masse 17 filing a motion to continue all at one time at some 18 informal docket if they know like a certain batch of 19 cases isn't going to go to trial the next docket? 20 A. So the -- the docket call for the 21 criminal trial docket happens every Wednesday 22 morning, and so any continuance request is made at 23 that docket. 24 Q. I'm saying could you just, you know, 25 show up with a bunch of requests to continue for a</p>
<p style="text-align: right;">Page 158</p> <p>1 with like pleadings and examples of things that -- 2 A. Not pleadings, but you know, if there's 3 -- somebody has attended a training and there's 4 information they think would be helpful to others in 5 the office, we keep it in there. 6 Q. Okay. And this is something that all 7 the public defenders in your district would have 8 access to no problem, right? 9 A. Yes. 10 Q. Tell me again why the -- you said the 11 St. Louis City trial docket is different than other 12 divisions, right? 13 A. Correct. 14 Q. So why is it so much higher than other 15 divisions? 16 (Court reporter interruption.) 17 Q. (By Mr. Moore) Why is it so much 18 different than other divisions in your opinion? 19 A. Well, it's a combination of things. 20 One, it's a rolling docket as you described. So 21 you're -- every six weeks you're required to appear 22 to request a continuance if you're not ready. 23 The other thing is that you're not 24 assigned to your trial division until you're 25 assigned out to trial. So if, you know, I'm</p>	<p style="text-align: right;">Page 160</p> <p>1 period of, you know, 90 days or something instead of 2 showing up at the docket every six weeks or whatever 3 the -- or every Wednesday you said? 4 A. No, because you don't know which case 5 is going to be ready until you show up at that 6 Wednesday docket. So the first question is is the 7 state ready? Or is the state asking for a 8 continuance. 9 Q. Uh-huh. 10 A. So you need to be there with the state. 11 You can't ex parte the judge for a continuance 12 request. You have to have the other side there. 13 And then the court wants to hear the reasons and the 14 court makes the determination as to whether or not 15 to grant it. So there's also continuances that are 16 denied. 17 Q. Right. Could you coordinate with the 18 prosecutors' office to get a joint continuance in 19 advance of that Wednesday hearing for a period of 20 time that was greater than like the week, the 21 rolling docket? 22 A. Generally not because the attorneys are 23 always in court. I mean, there's times that that 24 happens, but if you want a continuance on your case 25 you should be there Wednesday at the trial docket,</p>

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<p style="text-align: right;">Page 161</p> <p>1 and I handle the continuances for our office. So</p> <p>2 every attorney from the office isn't there. I'm</p> <p>3 present.</p> <p>4 Q. Okay. So it sounds like it would be</p> <p>5 possible to kind of -- kind of like a joint</p> <p>6 continuance on file instead of showing up at the</p> <p>7 dockets, but it's just not something that you feel</p> <p>8 is really feasible?</p> <p>9 A. No, it's not possible. Maybe I'm not</p> <p>10 explaining clearly, but if you want a continuance on</p> <p>11 your case, you need to be at the Wednesday docket.</p> <p>12 Q. You actually have to appear?</p> <p>13 A. Someone on your behalf. So as I said,</p> <p>14 I appear on behalf of our attorneys.</p> <p>15 Q. Okay. So --</p> <p>16 A. Could be like the Monday morning civil</p> <p>17 docket in Division 1. You need to appear.</p> <p>18 Q. We talked earlier about how your office</p> <p>19 doesn't have any paralegals, right?</p> <p>20 A. Correct.</p> <p>21 Q. But we also talked about how you do</p> <p>22 have sufficient administrative staff, right?</p> <p>23 A. We have good amount of administrative</p> <p>24 staff, but I'm not sure it's sufficient. It's</p> <p>25 sufficiently -- we're operating the office based on</p>	<p style="text-align: right;">Page 163</p> <p>1 could also probably assist in preparing, you know,</p> <p>2 files for trial. So when the attorney general goes</p> <p>3 to trial you would have well-prepared binders and</p> <p>4 you have a paralegal who is there with you and has</p> <p>5 your exhibits organized and available to produce on</p> <p>6 screen. When the public defender goes to trial they</p> <p>7 show up with cardboard box and a lot of paper.</p> <p>8 Q. So that goes for like preparing the --</p> <p>9 the, you know, materials and organizing the</p> <p>10 materials that are going to be taken into trial.</p> <p>11 But it sounds like the administrative staff that you</p> <p>12 have could probably do the same thing, right?</p> <p>13 A. I don't think they have the legal</p> <p>14 knowledge to do it. Most of our administrative</p> <p>15 staff does not -- do not have any advanced degrees.</p> <p>16 Q. So they couldn't like just print the</p> <p>17 exhibits out and like organize the exhibits and put</p> <p>18 them in the binder you don't think?</p> <p>19 A. Not unless you marked them all and told</p> <p>20 them what they were. I mean, they -- they haven't</p> <p>21 worked the case up with you.</p> <p>22 Q. Okay. Are there any other tasks that</p> <p>23 you feel a paralegal would be able to do that the</p> <p>24 current administrative staff cannot do?</p> <p>25 A. Nothing that's coming to mind.</p>
<p style="text-align: right;">Page 162</p> <p>1 what we have, but the attorneys are doing</p> <p>2 administrative work.</p> <p>3 Q. Okay. I just think earlier you -- I</p> <p>4 think you used the word sufficient administrative</p> <p>5 staff. I guess my question is what would a</p> <p>6 paralegal do that the administrative staff doesn't</p> <p>7 do? Like what would a paralegal add to the office?</p> <p>8 A. I would think they could do legal</p> <p>9 research. So we often utilize interns for legal</p> <p>10 research. So if we had a paralegal that would add</p> <p>11 some consistency to legal research.</p> <p>12 Q. Okay. Any other tasks that you feel a</p> <p>13 paralegal would do that the current staff can't or</p> <p>14 doesn't do?</p> <p>15 A. I think they could draft pleadings. I</p> <p>16 don't think our support staff could draft pleadings</p> <p>17 right now other than form pleadings.</p> <p>18 Q. I'm sorry, you said your staff can</p> <p>19 draft pleadings now?</p> <p>20 A. No, they use form pleadings. So an</p> <p>21 entry of appearance or a request for discovery.</p> <p>22 Q. And so you think paralegals would be</p> <p>23 able to draft like substantive like legal motions</p> <p>24 and things of that nature?</p> <p>25 A. I think if they did legal research they</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Let me see. Let me talk to you quickly</p> <p>2 about a couple of exhibits that were cited earlier.</p> <p>3 Exhibit 32, this is the order concerning probation</p> <p>4 revocation hearing. It is 32, right?</p> <p>5 MR. MAUNE: Yep, Fox 32.</p> <p>6 Q. (By Mr. Moore) So you're taking a look</p> <p>7 at the exhibit and you're familiar with the exhibit</p> <p>8 that we'd like to discuss?</p> <p>9 A. I am.</p> <p>10 Q. So tell me a little bit more about your</p> <p>11 role in preparing this order. I think you said</p> <p>12 earlier that you had assisted in the creation of the</p> <p>13 order; is that correct?</p> <p>14 A. Right. So when the initial</p> <p>15 conversations occurred in terms of caseload relief,</p> <p>16 probation revocations, in which the court was just</p> <p>17 intending to continue someone on probation was an</p> <p>18 area that we looked at where a public defender did</p> <p>19 not need to be involved.</p> <p>20 Q. So I guess tell me a little bit more</p> <p>21 about the history of this document. You're saying</p> <p>22 there was a group at some point convened that</p> <p>23 discussed these issues and then generated this</p> <p>24 document?</p> <p>25 A. So the Supreme Court decision in Waters</p>

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<p style="text-align: right;">Page 165</p> <p>1 directed the courts to meet with the public</p> <p>2 defenders and the prosecutors and to come up with</p> <p>3 resolutions for the case crisis.</p> <p>4 Q. Okay.</p> <p>5 A. Pursuant to that directive the 22nd</p> <p>6 Judicial Circuit had a meeting, and this was one of</p> <p>7 the things that came as a result of those meetings.</p> <p>8 Q. Okay. And so you -- did you actually</p> <p>9 like yourself draft the documents or like --</p> <p>10 A. No.</p> <p>11 Q. -- approve it or anything like that?</p> <p>12 A. I think Judge Bush is the one who</p> <p>13 drafted it.</p> <p>14 Q. Okay. Do you feel there are any</p> <p>15 constitutional issues involving this document?</p> <p>16 A. Constitutional issues?</p> <p>17 Q. Uh-huh. Or issues generally, just</p> <p>18 anything wrong, like with this -- this order that</p> <p>19 was generated as a result of the meeting?</p> <p>20 A. No.</p> <p>21 Q. All right. Very good. I'd like to</p> <p>22 look now at -- I might mispronounce this, Petsch, is</p> <p>23 it Petsch?</p> <p>24 A. Okay.</p> <p>25 Q. This appears to be an internal</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. Okay. Very good. So the seven days,</p> <p>2 that's fine. As to the 30-day --</p> <p>3 A. Unless you're the person sitting in</p> <p>4 jail for seven days without a lawyer.</p> <p>5 Q. Just like to talk about the 30-day</p> <p>6 contact requirement, right?</p> <p>7 A. Okay.</p> <p>8 Q. So the public defender actually</p> <p>9 requires a physical visit every 30 days to wherever</p> <p>10 the defendant is kept; is that right?</p> <p>11 A. If they're confined in the local jail,</p> <p>12 yes.</p> <p>13 Q. Only if they're confined in the local</p> <p>14 jail?</p> <p>15 A. Well, so if they're in the Department</p> <p>16 of Corrections that contact can be by phone call.</p> <p>17 Q. Okay. So the contact doesn't</p> <p>18 necessarily need to be physical, it can also be via</p> <p>19 telephone?</p> <p>20 A. Only if they're confined in the</p> <p>21 Department of Corrections.</p> <p>22 Q. Okay. And so in your experience have</p> <p>23 the public defenders been able -- have your</p> <p>24 defenders been able to comply with this requirement?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 166</p> <p>1 memorandum amongst the public defenders regarding</p> <p>2 certain policies for public defender office; is that</p> <p>3 correct?</p> <p>4 A. I think it's an e-mail within the area</p> <p>5 16 district office.</p> <p>6 Q. Okay.</p> <p>7 A. So the attorneys listed were all area</p> <p>8 16 attorneys, and it's from the person who at that</p> <p>9 time was the area 16 district defender.</p> <p>10 Q. I remember. This is not an e-mail that</p> <p>11 you were personally sent, right?</p> <p>12 A. No. I wasn't with the public defender</p> <p>13 system in 2002.</p> <p>14 Q. Okay. And you didn't have any</p> <p>15 participation in like drafting these policies that</p> <p>16 are mentioned in this e-mail, right?</p> <p>17 A. No. No.</p> <p>18 Q. I believe you said earlier I think that</p> <p>19 you did agree that -- you did agree with the</p> <p>20 policies that are contained in this e-mail; is that</p> <p>21 right?</p> <p>22 A. I agreed that the visitation policy of</p> <p>23 the public defender system is that you are to have</p> <p>24 contact with your clients within seven days of</p> <p>25 assignment and thereafter at least every 30 days.</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. They're not able -- they're not able to</p> <p>2 make a telephone call every 30 days to their client</p> <p>3 while they're in jail?</p> <p>4 A. That's not what I said.</p> <p>5 Q. Okay. Fair enough. What manner are</p> <p>6 they not able to comply?</p> <p>7 A. They're not able to meet with all of</p> <p>8 their confined clients within seven days of</p> <p>9 assignment of the file and they're not able to meet</p> <p>10 with all of their clients thereafter at least every</p> <p>11 30 days.</p> <p>12 Q. Okay. Just speaking to the 30-day</p> <p>13 requirement, though, they're able to make a phone</p> <p>14 call to them, right? It doesn't have to be an</p> <p>15 in-person visit?</p> <p>16 A. No, you cannot -- you cannot call</p> <p>17 somebody in jail.</p> <p>18 Q. I thought you said they were able to</p> <p>19 make a telephone call as opposed to visiting in</p> <p>20 person for the 30-day contact requirement?</p> <p>21 A. No. So if a person is confined in the</p> <p>22 Missouri Department of Corrections --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- so the Missouri penitentiary system,</p> <p>25 they've been sentenced on something else, they're in</p>

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<p style="text-align: right;">Page 169</p> <p>1 prison as opposed to in jail waiting trial.</p> <p>2 Q. Okay.</p> <p>3 A. Okay. So if they're in the Department</p> <p>4 of Corrections and they as a result of that could be</p> <p>5 anywhere within the state of Missouri.</p> <p>6 Q. Uh-huh.</p> <p>7 A. Or if they're in a federal</p> <p>8 penitentiary, which could be anywhere in the</p> <p>9 country, or if they're in a state penitentiary in</p> <p>10 another state, you do not have the ability to get to</p> <p>11 all of those locations throughout the state and the</p> <p>12 country.</p> <p>13 Q. Okay.</p> <p>14 A. So in that instance your contact can at</p> <p>15 some point be by phone.</p> <p>16 Q. Okay.</p> <p>17 A. But you can't only meet a client by</p> <p>18 phone and then be prepared to represent them at</p> <p>19 trial.</p> <p>20 Q. Right. Just as to these requirements,</p> <p>21 so they're able to do the telephone every 30 days</p> <p>22 for Department of Corrections and federal</p> <p>23 penitentiaries you're saying; is that right?</p> <p>24 A. Correct.</p> <p>25 Q. Now, the ones that they're not able to</p>	<p style="text-align: right;">Page 171</p> <p>1 are -- the public defender system has.</p> <p>2 Q. Is it based on any kind of like</p> <p>3 constitutional decision or any statute or anything?</p> <p>4 A. No. Other than the ethical obligation</p> <p>5 to communicate regularly with your client.</p> <p>6 Q. Okay. Do you know whether it's typical</p> <p>7 to meet with -- in person with your client every 30</p> <p>8 days in other types of cases?</p> <p>9 A. I missed the first thing you said.</p> <p>10 Q. Do you know whether it's typical in</p> <p>11 other types of cases to meet in person with your</p> <p>12 client every 30 days?</p> <p>13 A. Do you mean like in civil cases?</p> <p>14 Q. Yeah, civil cases or --</p> <p>15 A. I have no idea.</p> <p>16 Q. -- other -- any other kind of legal</p> <p>17 matter?</p> <p>18 A. I don't know. I can tell you in cases</p> <p>19 that I represented people in that were not criminal</p> <p>20 we met on a pretty regular basis.</p> <p>21 Q. Do you think it's necessary to meet in</p> <p>22 person with criminal defendants every 30 days?</p> <p>23 A. I think it is essential to have regular</p> <p>24 consistent contact with your clients especially if</p> <p>25 they are confined so that you can create a</p>
<p style="text-align: right;">Page 170</p> <p>1 complete would be when they're in local jail, right?</p> <p>2 A. Those are the ones that are more</p> <p>3 difficult, yes.</p> <p>4 Q. Okay. And you say you can't make a</p> <p>5 call into the jail?</p> <p>6 A. You cannot.</p> <p>7 Q. And is that in relation to the</p> <p>8 defenders' policy earlier where they cut off that</p> <p>9 access or is that something else?</p> <p>10 A. Our clients don't have phones in the</p> <p>11 jail. So there's no number to call them.</p> <p>12 Q. That wouldn't have anything to do with</p> <p>13 like public defender resources or whatnot, this has</p> <p>14 to do with the way the jails are administrated or</p> <p>15 the resources of the jails I guess?</p> <p>16 A. But it has an effect on public defender</p> <p>17 resources because as a result we need to go to the</p> <p>18 jails to see our clients and that usually takes</p> <p>19 quite a bit of time between waiting for the client,</p> <p>20 seeing the client, and if it's one of our jails that</p> <p>21 is not next to our building, driving to the jail.</p> <p>22 Q. Now, as far as the 30-day contact</p> <p>23 requirement in this e-mail, do you know what that</p> <p>24 30 days is based off of, that policy?</p> <p>25 A. The guidelines for representation that</p>	<p style="text-align: right;">Page 172</p> <p>1 relationship in which they trust your counsel and in</p> <p>2 which they accept your counsel.</p> <p>3 Q. Do you think that like a status letter</p> <p>4 to your client every 30 days would suffice?</p> <p>5 A. No.</p> <p>6 Q. And why is that?</p> <p>7 A. Because they want to see you. They</p> <p>8 have questions. And your status letter can't answer</p> <p>9 their questions.</p> <p>10 Q. Well, I mean, in theory I guess if the</p> <p>11 public defenders' phone lines were opened up and</p> <p>12 they could ask the questions, then you could</p> <p>13 respond --</p> <p>14 (Court reporter interruption.)</p> <p>15 Q. (By Mr. Moore) In theory, right, if</p> <p>16 there was -- if the public defenders' phone lines</p> <p>17 would allow the inmates to call their offices, then</p> <p>18 they could ask you their questions and you could</p> <p>19 answer those questions over the phone, right?</p> <p>20 A. If the phones could accommodate it.</p> <p>21 Q. Right.</p> <p>22 A. And if there was some sort of way to</p> <p>23 get the persons actually through to their attorneys.</p> <p>24 Q. Right. Do the public defenders have</p> <p>25 like a voicemail for each defender?</p>

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<p style="text-align: right;">Page 173</p> <p>1 A. We do.</p> <p>2 Q. So the inmates, if the phones -- if</p> <p>3 they were allowed to, they could call and leave a</p> <p>4 voicemail for their defender --</p> <p>5 A. That was another problem is that</p> <p>6 voicemails got filled by one person and then other</p> <p>7 persons could not leave voicemails.</p> <p>8 Q. Right. But just in theory if the phone</p> <p>9 lines were opened up, then the inmates could -- the</p> <p>10 defendants could call their attorney, leave them a</p> <p>11 voicemail, and that attorney could send a letter</p> <p>12 replying to their inquiries, right?</p> <p>13 A. Correct.</p> <p>14 Q. But that's not possible now because the</p> <p>15 public defender cut off that line of communication</p> <p>16 due to the burdens involved in the multiple phone</p> <p>17 calls, right?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know if the defendants have any</p> <p>20 access to like e-mails while they're in jail?</p> <p>21 A. No, they don't.</p> <p>22 Q. Are they able to send letters while</p> <p>23 they're in jail?</p> <p>24 A. Yes, they are. And without postage.</p> <p>25 Q. Without postage?</p>	<p style="text-align: right;">Page 175</p> <p>1 cases like probation violations or things of that</p> <p>2 nature, low-level stuff?</p> <p>3 A. No. They're supposed to meet those</p> <p>4 clients also.</p> <p>5 Q. Okay. What if there's just nothing</p> <p>6 going on in the case except for just typical</p> <p>7 discovery, people are sending documents and things</p> <p>8 back and forth, do you think the 30-day in-person</p> <p>9 meeting would still be required?</p> <p>10 A. Yeah, because you don't know what's</p> <p>11 going on with the client. I mean, the client could</p> <p>12 be having some issues that they need to discuss with</p> <p>13 you.</p> <p>14 Q. I'd like to ask you a couple questions</p> <p>15 about the fiscal year 2018 supplemental legislative</p> <p>16 budget request document, and my version I was given</p> <p>17 doesn't have the exhibit number.</p> <p>18 MS. SHIPMA: It's Exhibit 21.</p> <p>19 MR. MOORE: Okay. Thank you.</p> <p>20 THE WITNESS: Is it this one?</p> <p>21 MR. MOORE: 2018, yeah.</p> <p>22 THE WITNESS: Mine doesn't have a</p> <p>23 number on it either.</p> <p>24 MR. MAUNE: It's a replacement for one</p> <p>25 previously marked.</p>
<p style="text-align: right;">Page 174</p> <p>1 A. To us without postage, yes.</p> <p>2 Q. Okay. Also distinguishes clients from</p> <p>3 trial caseload clients, do you see that?</p> <p>4 A. I did see that.</p> <p>5 Q. What does that mean exactly? How --</p> <p>6 how does it determine if a client is a trial</p> <p>7 caseload client versus not a trial caseload client</p> <p>8 within I guess whenever you get assigned a case?</p> <p>9 A. I think this referred to dockets that</p> <p>10 existed in Kansas City back in 2002 that don't exist</p> <p>11 anymore.</p> <p>12 Q. Okay.</p> <p>13 A. I think at that point they had -- cases</p> <p>14 went to two different types of dockets. One was</p> <p>15 called something, I don't know what it was called,</p> <p>16 and the other one was called a trial caseload or</p> <p>17 trial docket. So I think that's what he's referring</p> <p>18 to, but I don't know for certain.</p> <p>19 Q. Okay. But in your opinion it would be</p> <p>20 all clients, they would all get the initial</p> <p>21 in-person visit in seven days of assignment; is that</p> <p>22 right?</p> <p>23 A. Correct.</p> <p>24 Q. Would there be any exceptions to that</p> <p>25 requirement for any other -- you know, any other</p>	<p style="text-align: right;">Page 176</p> <p>1 THE WITNESS: Okay.</p> <p>2 Q. (By Mr. Moore) Very good. So I think</p> <p>3 the questioning kind of centered on page seven. So</p> <p>4 would you turn to page seven? Whenever you're ready</p> <p>5 we can just kind of go over a couple things on</p> <p>6 there.</p> <p>7 A. I'm ready.</p> <p>8 Q. Okay. So we were looking at this chart</p> <p>9 on page seven, and you were kind of citing off the</p> <p>10 way that some of these columns were calculated,</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. And I did not quite catch the formulas.</p> <p>14 So I think the first one was net case units. That's</p> <p>15 the 89,515 figure. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What's the formula that you had cited</p> <p>18 for calculating that one?</p> <p>19 A. So you have to go back to page --</p> <p>20 Q. It's contained somewhere in this?</p> <p>21 A. It's not in here. You need to go back</p> <p>22 to the RubinBrown study and the RubinBrown study</p> <p>23 gives case units to different case categories. Then</p> <p>24 you would multiply the number of cases times that</p> <p>25 case unit. So if you had 300 felonies and felonies</p>

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<p style="text-align: right;">Page 177</p> <p>1 got a 14-case unit, that would be 300 times 14.</p> <p>2 Q. Okay. So this is all based off of the</p> <p>3 RubinBrown study then?</p> <p>4 A. Correct. That's my understanding,</p> <p>5 especially since it says RB up at the top.</p> <p>6 Q. Very good. Then we also looked at the</p> <p>7 column third from the right that says capacity,</p> <p>8 right?</p> <p>9 A. Right.</p> <p>10 Q. And I think you had a formula for that</p> <p>11 as well?</p> <p>12 A. I think it was number of attorneys</p> <p>13 times available hours within the year.</p> <p>14 Q. And that -- those metrics would also be</p> <p>15 based on the RubinBrown study and its conclusions, I</p> <p>16 guess, right?</p> <p>17 A. I think so, yes.</p> <p>18 Q. And percent of capacity?</p> <p>19 A. That's just a calculation.</p> <p>20 Q. Same kind of deal based on RubinBrown</p> <p>21 statistics?</p> <p>22 A. No. I think percent of capacity is</p> <p>23 just a mathematical computation.</p> <p>24 Q. Okay. So do you have any background in</p> <p>25 like statistical analysis or sociological studies of</p>	<p style="text-align: right;">Page 179</p> <p>1 credit for the type of cases that we handle, the</p> <p>2 severity of the cases, and the number of cases that</p> <p>3 have to be prepared for trial and the number of</p> <p>4 cases that go to trial.</p> <p>5 Q. Okay. Any other issues you have with</p> <p>6 the RubinBrown study or --</p> <p>7 A. No.</p> <p>8 Q. No. But you again are not really</p> <p>9 familiar with like their methodology for collecting</p> <p>10 the data or analyzing the data in that study, right?</p> <p>11 A. I was around when they did it. I mean,</p> <p>12 I know basically what -- how they did it.</p> <p>13 Q. Fair enough. But like you don't have a</p> <p>14 background in statistics you said, right?</p> <p>15 A. No.</p> <p>16 Q. So whether they're using the correct</p> <p>17 metrics or formulas or whatever else, you wouldn't</p> <p>18 be able to testify about that, right?</p> <p>19 A. No.</p> <p>20 Q. And as far as the data collection, do</p> <p>21 you have any knowledge about how they collected all</p> <p>22 of their data in the RubinBrown study?</p> <p>23 A. Just general.</p> <p>24 Q. Okay. So you wouldn't be able to say</p> <p>25 specifically if like they did everything correct as</p>
<p style="text-align: right;">Page 178</p> <p>1 any kind?</p> <p>2 A. No.</p> <p>3 Q. Do you have any opinions or are you</p> <p>4 able to give any testimony today about whether the</p> <p>5 RubinBrown study and its methodology are accurate?</p> <p>6 A. So I've always complained that the</p> <p>7 RubinBrown study does not take into consideration</p> <p>8 the number of cases that get tried in the city of</p> <p>9 St. Louis. So we're always towards the bottom of</p> <p>10 the list, but I don't feel like that accurately</p> <p>11 reflects the case overload crisis within our office.</p> <p>12 Q. Okay.</p> <p>13 A. So it's made for the system and I think</p> <p>14 it needs to be, you know, changed for individual</p> <p>15 offices for specific issues.</p> <p>16 Q. Okay.</p> <p>17 A. So for instance, a felony gets the same</p> <p>18 amount of time and a lot of our felonies are assault</p> <p>19 first degree.</p> <p>20 Q. Okay.</p> <p>21 A. And a lot of our felonies are, you</p> <p>22 know, four, five, six counts in one case.</p> <p>23 Q. Okay.</p> <p>24 A. But that only gets 14 hours credit. So</p> <p>25 I don't feel like the RubinBrown gives us enough</p>	<p style="text-align: right;">Page 180</p> <p>1 far as the data collection was concerned, right?</p> <p>2 A. No.</p> <p>3 Q. I think you said that you put data in</p> <p>4 for this; is that correct?</p> <p>5 A. Well, the data comes from our case</p> <p>6 database.</p> <p>7 Q. Okay. Just tell me a little bit about</p> <p>8 how -- how that worked.</p> <p>9 A. So you create a case, it goes into the</p> <p>10 case database. The case code is in there, so it</p> <p>11 tells you what type of case it is, which would</p> <p>12 impact the net case units, and the -- whether you</p> <p>13 withdrew or conflicted the case out within the first</p> <p>14 30 days would go in, which would impact the third</p> <p>15 row minus cases withdrawn.</p> <p>16 Q. Okay.</p> <p>17 A. And the number of attorneys you have</p> <p>18 would also go in. And the -- the number of</p> <p>19 attorneys does not reflect -- I guess this is one</p> <p>20 other complaint. The number of attorneys does not</p> <p>21 reflect the reality of number of attorneys you have.</p> <p>22 So while I have 30 attorneys assigned</p> <p>23 to the office, I am fully staffed right now for the</p> <p>24 first time in I think a year and a half, and I have</p> <p>25 an attorney who's leaving at the end of the month.</p>

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<p style="text-align: right;">Page 181</p> <p>1 So I've never really had 30 attorneys.</p> <p>2 Q. Okay. Okay. And so if I'm</p> <p>3 understanding correctly, this was -- you would be</p> <p>4 inputting this data into some kind of computer</p> <p>5 program or something?</p> <p>6 A. Right.</p> <p>7 Q. Okay. It was like a case database --</p> <p>8 A. Right.</p> <p>9 Q. -- is that right? That's not Lotus,</p> <p>10 though, right, it's some other thing?</p> <p>11 A. Right. No, it's Lotus.</p> <p>12 Q. Oh, it is Lotus, okay. So the</p> <p>13 RubinBrown used the Lotus data as far as you know to</p> <p>14 generate their statistics and stuff?</p> <p>15 A. Part of it, yes.</p> <p>16 Q. Okay. I think I have just a couple</p> <p>17 more. So I think you testified earlier that there's</p> <p>18 a high turnover and that you hired a bunch of new</p> <p>19 attorneys who just graduated the bar in October,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. Do you recall how many of those there</p> <p>23 are, like the really fresh ones?</p> <p>24 A. There's three who just -- just were</p> <p>25 licensed.</p>	<p style="text-align: right;">Page 183</p> <p>1 at Lewis Rice, so had several years' experience in</p> <p>2 civil litigation and came to us.</p> <p>3 Q. Do you know how many years' experience?</p> <p>4 A. I want to say two to three. Attorney</p> <p>5 number nine was -- passed the bar in October and</p> <p>6 came to work for us. Attorney number ten passed the</p> <p>7 bar in October and came to us. So actually I was</p> <p>8 wrong, there were more than three.</p> <p>9 Attorney number 11 passed the bar about</p> <p>10 ten years ago and did policy work and just came back</p> <p>11 to St. Louis and came to us. Attorney number 12 was</p> <p>12 a transfer from the West Plains office. Attorney</p> <p>13 number 13 --</p> <p>14 Q. Oh, sorry, the transfer, how long --</p> <p>15 were they a new attorney or they had been doing it a</p> <p>16 while?</p> <p>17 A. No, no. He had been doing it for a</p> <p>18 while.</p> <p>19 Q. Okay.</p> <p>20 A. Attorney -- he had been there for two</p> <p>21 years.</p> <p>22 Q. Okay.</p> <p>23 A. Attorney number 13 was -- was I already</p> <p>24 on 13?</p> <p>25 Q. Yeah.</p>
<p style="text-align: right;">Page 182</p> <p>1 Q. Okay. And then you said there were</p> <p>2 some other ones who had worked in other capacities</p> <p>3 prior to joining the public defender, right?</p> <p>4 A. Correct.</p> <p>5 Q. Kind of walk me through their</p> <p>6 backgrounds a little bit more.</p> <p>7 A. You talking about the 15 that were</p> <p>8 hired this year?</p> <p>9 Q. We'll go through them, yeah.</p> <p>10 A. Okay. So we'll start with December</p> <p>11 last year. Attorney number one was a new attorney</p> <p>12 in December and hired. Attorney number two was a</p> <p>13 new attorney in December and hired. Attorney number</p> <p>14 three was a new attorney in October and hired in</p> <p>15 February.</p> <p>16 Attorney number four had passed the bar</p> <p>17 in October and I think we were first place he was</p> <p>18 hired. So he was hired in March. Attorney number</p> <p>19 five passed the February bar and was hired in April.</p> <p>20 So he was a brand-new attorney at that time.</p> <p>21 Attorney number six was a new attorney</p> <p>22 this year and we hired her. Attorney number seven</p> <p>23 had passed the bar the year before but had been</p> <p>24 working in document review for one of the larger</p> <p>25 firms. Attorney number eight had been an associate</p>	<p style="text-align: right;">Page 184</p> <p>1 A. So this is attorney 14.</p> <p>2 Q. Oh, I think we --</p> <p>3 A. Are we on 13?</p> <p>4 Q. I think we're on 13.</p> <p>5 A. Okay. We're missing somebody in there.</p> <p>6 Attorney 13 was an attorney in our Springfield</p> <p>7 office and then went into private practice and moved</p> <p>8 to St. Louis, and I recruited her to come back to</p> <p>9 us. She came back with experience.</p> <p>10 Q. Okay.</p> <p>11 A. And attorney 14 was a prosecutor in the</p> <p>12 circuit attorney's office who left that office and</p> <p>13 joined us. And there's one more person who I feel</p> <p>14 terrible I've forgotten.</p> <p>15 Q. We'll just keep this transcript</p> <p>16 private. You don't have to worry about hurting her</p> <p>17 feelings. Okay.</p> <p>18 So in any event, it sounds like you do</p> <p>19 have some fresh faces, but also some faces that have</p> <p>20 been out and they were practicing law for a number</p> <p>21 of years, and I think you said one had like ten</p> <p>22 years of experience, though not in criminal law,</p> <p>23 right?</p> <p>24 A. Not in law. He was doing policy work.</p> <p>25 Q. For the entire ten years or --</p>

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<p style="text-align: right;">Page 185</p> <p>1 A. Yeah.</p> <p>2 Q. Do you know how long the prosecutor had</p> <p>3 been out practicing as a prosecutor?</p> <p>4 A. She began as a prosecutor in 2008</p> <p>5 or '9.</p> <p>6 Q. Okay. Very good. So as to the -- the</p> <p>7 really new ones, right, they all went to a law</p> <p>8 school and passed the bar exam, right?</p> <p>9 A. Yes.</p> <p>10 Q. And as part of their law school</p> <p>11 curriculum they all, you know, took criminal law and</p> <p>12 evidence and did all the things you're supposed to</p> <p>13 do in law school, correct?</p> <p>14 A. I hope so.</p> <p>15 Q. Right. And the, you know, ethical</p> <p>16 obligations and requirements for a new attorney</p> <p>17 aren't really any different than for attorneys who</p> <p>18 have been out there for 30 plus years, right?</p> <p>19 A. Correct.</p> <p>20 Q. And I think, you know, as a new</p> <p>21 attorney you're still deemed to be competent just</p> <p>22 like an attorney of 30 plus years when it comes to,</p> <p>23 you know, the services you're supposed to render to</p> <p>24 your client, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 187</p> <p>1 some follow-up.</p> <p>2 EXAMINATION</p> <p>3 QUESTIONS BY MS. SHIPMA:</p> <p>4 Q. I have a few follow-up questions. I</p> <p>5 think I'm going to go backwards just for the fun of</p> <p>6 it. I won't speak backwards. I'm just going -- so</p> <p>7 you were talking about the RubinBrown numbers and I</p> <p>8 believe you said in your opinion they're not fair to</p> <p>9 your office. I don't think those were your exact</p> <p>10 words, but that was the meaning that -- that you</p> <p>11 gave that they don't --</p> <p>12 A. Correct.</p> <p>13 Q. -- accurately reflect the reality in</p> <p>14 your office?</p> <p>15 A. Yes.</p> <p>16 Q. Now, is -- does that mean that the</p> <p>17 RubinBrown numbers appear to place your office at a</p> <p>18 lower percentage of capacity than you think is fair?</p> <p>19 A. Yes.</p> <p>20 Q. The attorneys from Thompson Coburn that</p> <p>21 are -- that you had, you had talked about having an</p> <p>22 attorney --</p> <p>23 A. Yes.</p> <p>24 Q. -- from Thompson Coburn, did that</p> <p>25 attorney have a lesser caseload than the other</p>
<p style="text-align: right;">Page 186</p> <p>1 MR. MOORE: Sorry, you're going to --</p> <p>2 MS. SHIPMA: I don't know that the</p> <p>3 rules of evidence deem you competent just because</p> <p>4 you're an attorney. They say you have the</p> <p>5 obligation to be competent, but the rules of</p> <p>6 evidence don't deem someone competent.</p> <p>7 MR. MOORE: Okay. That's fair enough.</p> <p>8 RubinBrown study.</p> <p>9 MS. ROSCA: So Justin, it's one o'clock</p> <p>10 and Mr. Reynolds is here. So I just want you to --</p> <p>11 MR. MOORE: No, that's good.</p> <p>12 MS. ROSCA: You've been going for over</p> <p>13 an hour and a half.</p> <p>14 MR. MOORE: This is going to be it, I</p> <p>15 think.</p> <p>16 Q. (By Mr. Moore) And so these are people</p> <p>17 that also went through the interview process with</p> <p>18 your office, right?</p> <p>19 A. Correct.</p> <p>20 Q. And they met all the requirements you</p> <p>21 would expect for someone to work in your office and</p> <p>22 they were hired, right?</p> <p>23 A. Correct.</p> <p>24 MR. MOORE: I think that's all I have.</p> <p>25 MS. SHIPMA: Okay. Mary, I just have</p>	<p style="text-align: right;">Page 188</p> <p>1 public defenders in your office?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know about what his or her</p> <p>4 caseload was?</p> <p>5 A. I believe he had about 30 to 40</p> <p>6 misdemeanors at a time.</p> <p>7 Q. Do you remember when the RubinBrown</p> <p>8 study -- when the report came out?</p> <p>9 A. 2016, '15.</p> <p>10 Q. And I believe you said that in your</p> <p>11 memory that the public defender system was tracking</p> <p>12 their time from 2014 to 2016?</p> <p>13 A. I don't remember when it began. I know</p> <p>14 it ended October 2016.</p> <p>15 Q. Did the ending of it coincide with</p> <p>16 completion of the RubinBrown study?</p> <p>17 A. The RubinBrown study was completed,</p> <p>18 yes.</p> <p>19 Q. Did the -- did keeping time continue</p> <p>20 for a period after RubinBrown was completed?</p> <p>21 A. I don't know the answer to that</p> <p>22 question.</p> <p>23 Q. All right. Of the cases that are</p> <p>24 handled in your office during a year, a typical</p> <p>25 year, what would you estimate the percentage of</p>

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<p style="text-align: right;">Page 189</p> <p>1 cases that utilize experts to be?</p> <p>2 A. Probably under five percent.</p> <p>3 Q. And the same question for depositions,</p> <p>4 what would you estimate the number of cases that</p> <p>5 utilize depositions to be?</p> <p>6 A. Well, we -- we've asked for 300</p> <p>7 depositions in fiscal year 2017.</p> <p>8 Q. And that was about 4,200 cases; is that</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Now, if there are no rules that limit</p> <p>12 the taking of depositions, to what do you attribute</p> <p>13 this low number of depositions?</p> <p>14 A. That the cases are being prepared</p> <p>15 quickly and resolved quickly.</p> <p>16 Q. And the same with the use of experts,</p> <p>17 why -- why are only five percent of cases have</p> <p>18 experts?</p> <p>19 A. I -- I attribute that more to our lack</p> <p>20 of experience and attorneys able to determine when</p> <p>21 an expert would add value to the case.</p> <p>22 Q. And in your experience, are defendants</p> <p>23 out there bamboozling the system to try to get</p> <p>24 public defender representation?</p> <p>25 A. No, not at all.</p>	<p style="text-align: right;">Page 191</p> <p>1 Q. (By Ms. Shipma) And you talked about</p> <p>2 how a case or a matter was defined?</p> <p>3 A. Yes.</p> <p>4 Q. To your knowledge, is the -- the</p> <p>5 description that you gave, is that consistent</p> <p>6 throughout the public defender system or is that --</p> <p>7 does that just apply to your district?</p> <p>8 A. It's how I was trained as a district</p> <p>9 defender to do it, so I would assume so, but I</p> <p>10 haven't looked at other people's databases.</p> <p>11 Q. I believe Mr. Moore asked you a</p> <p>12 question about who you've spoken to regarding</p> <p>13 concerns about your caseload without giving you a</p> <p>14 time frame for that, and you answered you talked to</p> <p>15 the attorneys in the office, the Post-Dispatch, MSPD</p> <p>16 management, some judges. What time frame were you</p> <p>17 giving your answer for?</p> <p>18 A. For the last several months. So since</p> <p>19 the Hinkebein decision came out.</p> <p>20 Q. You said that you have three attorneys</p> <p>21 right now who handle conflicts?</p> <p>22 A. Correct.</p> <p>23 Q. Is that all they handle --</p> <p>24 A. Yes.</p> <p>25 Q. -- conflicts? And is that --</p>
<p style="text-align: right;">Page 190</p> <p>1 Q. And I know --</p> <p>2 A. The people we represent are very poor.</p> <p>3 Q. I know you gave a couple of -- you gave</p> <p>4 an example and then said maybe five times when your</p> <p>5 office has gone back to court and said we don't</p> <p>6 think this person -- you know, because the person</p> <p>7 was going on a cruise or whatever.</p> <p>8 A. Right.</p> <p>9 Q. But that in your opinion, do you see</p> <p>10 that -- do you believe that that's happening more</p> <p>11 often than your people are catching?</p> <p>12 A. No. And usually if the person posts a</p> <p>13 high bond, which may cause us to question their</p> <p>14 indigence, it's a family member who has posted it</p> <p>15 for them.</p> <p>16 Q. So doing further investigation on the</p> <p>17 financial means of these folks wouldn't result in a</p> <p>18 substantial decrease in the number of cases handled</p> <p>19 by the -- or by the public defenders office; is that</p> <p>20 correct?</p> <p>21 MR. MOORE: Sorry. I'll just object,</p> <p>22 calls for speculation. Subject to that, you can go</p> <p>23 ahead and respond.</p> <p>24 A. I doubt it if it would decrease it at</p> <p>25 all.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. One of the attorneys has a few</p> <p>2 St. Louis City cases.</p> <p>3 Q. And has that been your practice to have</p> <p>4 attorneys who handle conflicts only handle conflict</p> <p>5 cases?</p> <p>6 A. Generally because they have tended to</p> <p>7 be experienced attorneys, they've also had maybe a</p> <p>8 St. Louis City homicide also.</p> <p>9 Q. You've spoken a couple of times about</p> <p>10 someone not being eligible as opposed to not being</p> <p>11 indigent. I took it that's what you were meaning.</p> <p>12 Can you explain the difference in those two terms,</p> <p>13 if there is a difference?</p> <p>14 A. There is a difference. So there are</p> <p>15 indigent people, which is a determination based upon</p> <p>16 their income and assets, and then there are eligible</p> <p>17 cases. So you can be indigent and not have an</p> <p>18 eligible case. So if you're indigent and you're</p> <p>19 charged with municipal code violation, you would not</p> <p>20 be eligible.</p> <p>21 Q. Thank you. When you said that you have</p> <p>22 15 to 30 open cases, I wasn't certain because you</p> <p>23 had been asked about the number of clients that you</p> <p>24 have as well. And so I just wanted to make sure</p> <p>25 that we get the -- the answers correct. How many</p>

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<p style="text-align: right;">Page 193</p> <p>1 open cases do you have right now?</p> <p>2 A. Currently right now, 20.</p> <p>3 Q. For yourself?</p> <p>4 A. Yes.</p> <p>5 Q. And do you know about how many clients</p> <p>6 that represents?</p> <p>7 A. One client has two cases. So 19.</p> <p>8 MS. SHIPMA: That's all the questions I</p> <p>9 have.</p> <p>10 MR. MAUNE: I have nothing further.</p> <p>11 FURTHER EXAMINATION</p> <p>12 QUESTIONS BY MR. MOORE:</p> <p>13 Q. Just one last question. As far as like</p> <p>14 use of experts and amount of depositions you guys are</p> <p>15 taking, would you say that you pretty much do</p> <p>16 whatever the case requires to the extent that you're</p> <p>17 able?</p> <p>18 A. We do what the attorney thinks is</p> <p>19 appropriate, the assigned attorney.</p> <p>20 Q. Right. So I mean, not every case is</p> <p>21 going to require an expert, right?</p> <p>22 A. Right.</p> <p>23 Q. And any cases that require an expert</p> <p>24 may be the case that it gets plead out or doesn't</p> <p>25 reach that stage where an expert becomes necessary,</p>	<p style="text-align: right;">Page 195</p> <p>1 benefited from the use of -- of an expert, but an</p> <p>2 expert wasn't requested?</p> <p>3 MR. MOORE: Call for -- I'll object.</p> <p>4 It calls for speculation, but you can answer.</p> <p>5 A. Yes.</p> <p>6 Q. (By Ms. Shipma) And the same with</p> <p>7 depositions, are there cases where there should have</p> <p>8 been depositions taken in a case but they were not?</p> <p>9 A. The case would have benefited from</p> <p>10 depositions.</p> <p>11 Q. And what is -- in your opinion, what</p> <p>12 has been the reason for these either experts not</p> <p>13 being used or depositions not being taken in those</p> <p>14 cases?</p> <p>15 A. Lack of experience of the attorneys,</p> <p>16 lack of continuity of the attorneys in the office,</p> <p>17 and lack of time.</p> <p>18 Q. Every case that comes through your</p> <p>19 office, is it fully worked up to the extent it</p> <p>20 should be?</p> <p>21 A. No.</p> <p>22 MS. SHIPMA: Nothing further.</p> <p>23 FURTHER EXAMINATION</p> <p>24 QUESTIONS BY MR. MOORE:</p> <p>25 Q. And just to clarify, you also discussed</p>
<p style="text-align: right;">Page 194</p> <p>1 right?</p> <p>2 A. Correct. But -- but you would have</p> <p>3 already retained the expert even if it results in a</p> <p>4 plea.</p> <p>5 Q. Depending on where the case is at,</p> <p>6 right --</p> <p>7 A. Yeah.</p> <p>8 Q. -- wherever -- and the same thing with,</p> <p>9 you know, depositions and other types of discovery,</p> <p>10 right?</p> <p>11 A. What was the question?</p> <p>12 Q. The question was you do whatever like</p> <p>13 amount of discovery or consulting with experts or</p> <p>14 retaining experts that is necessary for the cases,</p> <p>15 but sometimes just because of the way the cases get</p> <p>16 resolved there are times whenever those -- you don't</p> <p>17 quite get to those steps where you would then be</p> <p>18 retaining the expert or be doing the deposition; is</p> <p>19 that fair?</p> <p>20 A. Correct. Yes.</p> <p>21 MR. MOORE: That's all.</p> <p>22 FURTHER EXAMINATION</p> <p>23 QUESTIONS BY MS. SHIPMA:</p> <p>24 Q. Now I have a follow-up. Mary, in your</p> <p>25 opinion are there instances where cases could have</p>	<p style="text-align: right;">Page 196</p> <p>1 another reason for not doing the discovery of the</p> <p>2 experts, which was that sometimes the case gets</p> <p>3 resolved prior to the stage in the litigation where</p> <p>4 you would be retaining the expert or doing a</p> <p>5 discovery, right?</p> <p>6 A. Yes, but when the case gets resolved</p> <p>7 early you want to know why? It's because the person</p> <p>8 is in jail and we have not been able to get together</p> <p>9 the resources to do a bond reduction to get the</p> <p>10 person out of jail.</p> <p>11 Q. Or they got a good deal, right?</p> <p>12 A. No, because we don't get any deals.</p> <p>13 Q. No defendant ever gets a plea deal of</p> <p>14 any kind in the city?</p> <p>15 A. Very seldom.</p> <p>16 Q. So it does happen sometimes, though?</p> <p>17 A. It's beginning to happen.</p> <p>18 Q. Okay. And I know it may be a little</p> <p>19 hyperbole or whatever else, but I mean, there are --</p> <p>20 plea deals do take place and defendants do plead</p> <p>21 guilty in exchange for, you know --</p> <p>22 MS. ROSCA: Objection, calls for</p> <p>23 speculation.</p> <p>24 Q. (By Mr. Moore) I'm asking whether this</p> <p>25 does happen. They do make deals or whatever else</p>

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<p style="text-align: right;">Page 197</p> <p>1 whereby they plead guilty and then they receive a 2 reduction in the possible sentence that they could 3 receive, right? 4 A. Right. Yeah. 5 Q. And sometimes that happens before you 6 would get to the stage where experts are required, 7 right? 8 A. It could. 9 Q. Has that happened? I mean, does that 10 happen? 11 A. I can't tell you a specific case off 12 the top of my head, no. 13 MR. MOORE: Okay. I think that's good 14 enough. Done. 15 VIDEOGRAPHER: The time is 1:14. We 16 are off the record. This concludes our deposition 17 of Mary Fox. 18 COURT REPORTER: Signature? 19 MS. SHIPMA: Yeah, just like before I'm 20 going to read and sign. 21 COURT REPORTER: And counsel, can I 22 just get on the record that everybody is going to 23 duplicate transcript orders from the last time we 24 had depositions in October? Is that a yes? 25 MS. SHIPMA: Yes.</p>	<p style="text-align: right;">Page 199</p> <p>1 CERTIFICATE OF REPORTER 2 3 I, William L. DeVries, a Certified 4 Court Reporter (MO), Certified Shorthand Reporter 5 (IL), Registered Diplomate Reporter, and a Certified 6 Realtime Reporter, do hereby certify that the 7 witness whose testimony appears in the foregoing 8 deposition was duly sworn by me pursuant to Section 9 492.010 RSMo; that the testimony of said witness was 10 taken by me to the best of my ability and thereafter 11 reduced to typewriting under my direction; that I am 12 neither counsel for, related to, nor employed by any 13 of the parties to the action in which this 14 deposition was taken, and further that I am not a 15 relative or employee of any attorney or counsel 16 employed by the parties thereto, nor financially or 17 otherwise interested in the outcome of the action. 18 19 20 21 _____ 22 Certified Court Reporter 23 within and for the State of Missouri 24 25</p>
<p style="text-align: right;">Page 198</p> <p>1 MR. MOORE: That's a yes for me. 2 MR. MAUNE: Yes. 3 (WHEREIN, the deposition was concluded 4 at 1:14 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 200</p> <p>1 Alaris Litigation Services 2 (314) 644-2191 3 4 December 26, 2017 5 Ms. Jacqueline Shipma 6 Missouri State Public Defender 7 1000 West Nifong 8 Building 7, Suite 100 9 Columbia, Missouri 65203 10 (573) 525-5212 11 jacqueline.shipma@mspd.mo.gov 12 In Re: SHONDEL CHURCH, et al. vs. STATE OF 13 MISSOURI, et al. 14 15 Dear Ms. Shipma: 16 17 Please find enclosed your copy of the deposition of 18 MARY FOX taken on December 19, 2017 in the 19 above-referenced case. Also enclosed is the 20 original signature page and errata sheets. 21 Please have the witness read your copy of the 22 transcript, indicate any changes and/or corrections 23 desired on the errata sheets, and sign the signature 24 page before a notary public. 25 26 Please return the errata sheets and notarized 27 signature page to Alaris Litigation Services, 711 28 North Eleventh Street, St. Louis, Missouri 63101 29 within 30 days of receipt. 30 31 Thank you for your attention to this matter. 32 33 Sincerely, 34 35 William L. DeVries, CCR(MO)/CSR(IL)/RDR/CRR 36 Enclosures</p>

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<p style="text-align: right;">Page 201</p> <p>1 WITNESS ERRATA SHEET 2 Witness Name: MARY FOX 3 Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al. 4 5 Date Taken: DECEMBER 19, 2017 6 7 Page #_____ Line #_____ 8 Should Read: _____ 9 Reason for Change: _____ 10 11 Page #_____ Line #_____ 12 Should Read: _____ 13 Reason for Change: _____ 14 15 Page #_____ Line #_____ 16 Should Read: _____ 17 Reason for Change: _____ 18 19 Page #_____ Line #_____ 20 Should Read: _____ 21 Reason for Change: _____ 22 23 24 25 Witness Signature: _____</p>	
<p style="text-align: right;">Page 202</p> <p>1 STATE OF) 2) 3 COUNTY OF) 4 I, MARY FOX, do hereby certify: 5 That I have read the foregoing deposition; 6 That I have made such changes in form and/or 7 substance to the within deposition as might be 8 necessary to render the same true and correct; 9 That having made such changes thereon, I 10 hereby subscribe my name to the deposition. 11 I declare under penalty of perjury that the 12 foregoing is true and correct. 13 14 15 MARY FOX 16 Executed this day of , 17 20__, at . 18 19 Notary Public: 20 My Commission Expires: 21 22 23 24 25</p>	

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